IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949.

No. 302

302

DISTRICT OF COLUMBIA, *Petitioner*,

v.

GERALDINE LITTLE, alias MILDRED PARKER, *Respondent*.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

BRIEF FOR THE DISTRICT OF COLUMBIA.

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DIVISION OF PRINTING AND PUBLICATIONS—GOVERNMENT OF THE DISTRICT OF COLUMBIA

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OPINIONS BELOW.

The memorandum opinion of the Municipal Court is set forth in the Transcript of Record (R. 2-5).

The opinion of the Municipal Court of Appeals is reported in 62 Atlantic 2d 874.

The opinion of the United States Court of Appeals has not been reported.

JURISDICTION.

The judgment of the United States Court of Appeals for the District of Columbia was entered on August 1, 1949 (R. 30). The petition for certiorari filed August 31, 1949, was granted November 7, 1949. Jurisdiction to issue the writ is conferred by Title 28, U. S. Code, Sec. 1254 (Act of June 25, 1948, 62 Stat. ——, Ch. 646).

STATEMENT OF THE CASE.

On September 10, 1947, an information was filed in the Municipal Court for the District of Columbia, Criminal Division, charging that the respondent, on the 9th day of September in the year A.D. 1947, in the District of Columbia, and divers others days and times between that date and the date of the filing of this information

> "* * * and on premises 1315 10th Street, northwest, did therein hinder, obstruct, and interfere with an inspector of the Health Department in the performance of his duty in carrying out the provisions of an Act of Congress the Health Regulations Contrary to and in violation of an ordinance Act of Congress Health Regulations in such case made and provided and constituting a law of the District of Columbia." (R. 1-2.)

The respondent pleaded "Not Guilty" (R. 2). Upon trial by the Court without a jury she was found guilty and was sentenced to pay a fine of $25.00 or, in default thereof, to serve a term of ten days in jail.

At the trial below the prosecution adduced testimony to establish the following facts:

An occupant of premises No. 1315 10th Street, N. W., made complaint to the Health Officer that there was an accumulation of loose and uncovered garbage and trash

n the halls of said premises and that certain of the persons esiding therein had failed to avail themselves of the oilet facilities, whereupon the Health Officer directed an nspector of the Health Department to make an inspec- ion of said premises. Accompanied by a uniformed mem- ber of the Metropolitan Police Department the uniformed ealth inspector proceeded to said premises. Upon arrival he health inspector and the police officer observed one Allen about to enter said premises. The health inspector identified himself as an inspector of the Health Department, stated the nature of his business, and asked permission of Allen to enter the premises for the purpose of making an inspec- tion. Allen refused to permit the health inspector to enter, stating that the owner of the premises was not at home (R. 8). During the discussion between the health inspector and Allen, a woman, who at that time was unknown to the health inspector or to the police officer, was standing across the street from the premises. She called to Allen not to permit the inspector to enter the premises. Thereafter this woman came across the street and up to the porch of the said premises and continued to tell Allen not to per- mit the inspector to enter the said premises for the purpose of making an inspection. The police officer asked the woman if she were the owner of the premises and upon her denial of ownership of the premises instructed her to go about her business. Allen was then informed that he was inter- fering with a health officer in the performance of his duties, and was placed under arrest. The police officer thereupon took Allen to the nearest police call box. The unidentified woman followed along protesting the right of the health inspector to enter the premises. She finally identified her- self as the owner of the premises, and demanded that she also be arrested for interfering with a health officer in the performance of his duties. She thereupon seized the health inspector's arm and attempted to grab the papers he was holding in his hand. She was then arrested.

The police officer testified substantially the same as the health inspector. On cross examination the health inspector and the police officer both testified they had no warrant or other process of court. The District of Columbia thereupon announced its case as closed (R. 9).

The respondent testified in her own behalf substantially as follows: That she came from across the street with a bundle of groceries in her hand and saw the health inspector and the police officer in front of her door talking to Allen; that she was asked if she lived at these premises and she replied that it was her private residence; that the health inspector and the police officer then demanded that she permit the health inspector to make an inspection of the premises; that she denied permission to them to enter said premises on the ground that her constitutional rights did not require her to submit to an inspection; and that after some discussion respondent and Allen were placed under arrest for interfering with a health inspector in the performance of his duties and taken to the nearest patrol box (R. 9).

The evidence adduced by the prosecution was wholly of a testimonial character and related exclusively to events occurring beyond the confines of the respondent's dwelling. No search of her dwelling was made and no demonstrative evidence was seized. No facts obtained by visual observation of the confines of her dwelling were introduced into evidence against her (R. *passim*).

The trial court took the case under advisement and, on April 10, 1948, filed a memorandum opinion holding "* * * that the Commissioners were vested with authority to enact said regulations; that the regulation in question is necessary and proper for the protection of the public health and comfort and is not in violation of any constitutional rights of the defendant * * *" and finding the defendant guilty, and thereafter imposed sentence (R. 2-5).

Upon appeal, the Municipal Court of Appeals (R. 10-15) reversed, holding that the attempt of the health officer to

inspect a private dwelling without a warrant, in the absence of an immediate danger or a dangerous nuisance per se, was an unconstitutional method of search, which was not required by the regulations. The Municipal Court of Appeals declared that:

> "* * * It may be carried out within the framework of the Constitution by obtaining a warrant. Hence we do not wish to be understood as saying that the regulation is unreasonable on its face. We express an opinion only as to its application under the present facts." (R. 14)

Upon petition of the District of Columbia, the United States Court of Appeals for the District of Columbia Circuit granted an appeal. In its decision that Court affirmed the judgment of the Municipal Court of Appeals for the District of Columbia. Although it recognized the fact that no statutory procedure exists in the District of Columbia for issuance of a magistrate's warrant to conduct an inspection of a dwelling, the United States Court of Appeals held:

> "* * * that health officials without a warrant cannot invade a private home to inspect it to see that it is clean and wholesome, or to search for garbage upon a complaint that garbage is there, or to see whether the occupants have failed to avail themselves of the toilet facilities therein." (R. 26).

In his dissenting opinion Judge Holtzoff ~~held~~ said that:

> "* * * the case is one of novel impression involving an important principle of Constitutional law and the decision may have wide implications and far-reaching consequences." (R. 28)

and declared that the Fourth Amendment does not apply to inspection in aid of the police power, if no seizure is in-

tended (R. 31), and that the right to inspect a dwelling in the interests of public safety and public health is a qualification upon the right of privacy in the home, which if reasonably exercised, is perfectly proper (R. 35).

QUESTION PRESENTED.

The question presented is whether the entry of a private dwelling without warrant by a health officer or other municipal official under reasonable conditions and circumstances of fact in the discharge of duties imposed upon him by Acts of Congress and regulations promulgated thereunder designed to protect public health, safety and welfare, is unlawful as violative of the provisions of the Fourth Amendment to the Constitution of the United States prohibiting unreasonable searches and seizures.

SPECIFICATION OF ERRORS.

The United States Court of Appeals for the District of Columbia Circuit erred:

1. In holding that the Fourth Amendment to the Constitution of the United States applies to inspections of private dwellings by health officers for the purpose of securing observance of laws enacted under the police power to the same extent that it applies to searches of persons and dwellings and the seizure of articles for use as incriminatory evidence in criminal prosecutions.

2. In holding that a private dwelling may not be inspected without a warrant, over the objection of the owner or occupant, by a health officer for the purpose of securing compliance with laws and regulations enacted and made in the exercise of the police power, in the absence of acute emergency or unavoidable crisis.

STATUTES INVOLVED.

Constitutional provisions, statutes and regulations involved and other statutes and regulations affected by the decision of the United States Court of Appeals are set forth in the Appendix.

SUMMARY OF ARGUMENT

In the exercise of the police power and within limits defined by decisions of this Court Congress has enacted legislation for the District of Columbia embodying the developments of science in the fields of public health and safety. Recognizing the danger to the public which would result from violation of these enactments, Congress adopted, again within the decisions of this Court, an enforcement policy consisting of inspection, notice to comply, and summary abatement or prosecution, or both, in the event of failure or refusal to comply.

That enforcement policy has proved its worth by abating annually literally thousands of nuisances dangerous to health and safety. That same policy is widely used in the States.

It is essential to life in a congested urban community that nuisances of the type here involved—garbage and filth—be promptly abated. Garbage attracts rats, whose bite, or the bite of the fleas which they carry, transmit endemic typhus, sylvatic plague and bubonic plague. Human excrement is the only source of typhoid fever and other enteric diseases. Inspection is the only means of discovering and abating these nuisances.

This Court has held that the Fourth Amendment applies only to criminal and quasi-criminal cases. But it does not apply to all criminal cases. Petitioner contends that the Fourth Amendment does not apply to entries without warrant under authority of valid enactments in the exercise of the police power, i.e., enactments for the protection of public health and safety. The object of such an entry is for the purpose of discovering and abating nuisances, rather than for the purpose of securing evidence upon which to procure the conviction and punishment of crime.

The decision of the United States Court of Appeals held that entries of private dwellings, even in the exercise of the police power, must be in conformity with the requirements of the Fourth Amendment. That decision necessarily will put an end to inspection in aid of the police power, since the purpose of the inspection is to ascertain what is within the dwelling and the probable cause requisite for obtaining a search warrant, even if such an "inspection warrant" were to be provided, presents an insuperable obstacle.

But even if, as the United States Court of Appeals held, the police power is in collision with the Fourth Amendment, it does not necessarily follow that the police power must give way. In many instances this Court has held that the reasonable exercise of the police power is a valid limitation upon other rights guaranteed by the Constitution.

ARGUMENT

Introduction

The District of Columbia, petitioner herein, seeks the right to continue to follow the procedure specifically approved by this Court in 1905 for protecting the public from the dangers to health inherent in garbage. In *California Reduction Company* v. *Sanitary Reduction Works*, 199 U. S. 306, 321-322, 50 L. Ed. 204, 211, 26 S. Ct. 100, this Court declared:

> "It is the duty, primarily, of a person on whose premises are garbage and refuse material, to see to it, by proper diligence, that no nuisance arises therefrom which endangers the public health. *The householder may be compelled to submit even to an inspection of his premises*, at his own expense, and forbidden to keep them, or allow them to be kept, in such condition as to create disease."

I

CERTAIN CONTAGIOUS DISEASES CAN BE PREVENTED ONLY BY CONTROLLING THEIR ORIGINS THROUGH INSPECTIONS OF PREMISES AND ABATEMENT OF DISEASE SOURCES FOUND THERE.

Before an attempt is made to apply existing legal precepts to the facts and the issues raised by this proceeding, it seems in order first to discuss development of public sanitation and of sanitary engineering with relation to corresponding developments in the law.

At the time of the adoption of the Constitution of the United States the diseases which today are recognized to be of the gravest concern to the welfare of society [1] were not yet even identified; the quarantine procedure was apparently the only known hindrance to the spread of contagious disease and, since little was known of the causes of contagion and disease, even quarantine was practiced with indifferent success.[2] The only certain method by which the spread of disease could be halted was one far too drastic for the effective progress of civilization.[3]

But in the less than two centuries transpiring since that time, milestone after milestone in the struggle against epidemic disease has been passed. In 1762 came the first suggestion of the means whereby infectious diseases spread,

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[1] Communicable Diseases. (App. 5).

[2] Mead, Dr. Richard: Short Discussion Concerning Pestilential Contagion and the Methods to Be Used to Prevent It (1720).

[3] John Simon: English Sanitary Institutions, second edition 1897, page 100, et seq. "Those endeavors to exclude by Quarantine the contagion of the Plague were as ineffectual as if their intention had been to bar out the east wind or the new moon; and, in the sanitary records of the Metropolis, the year 1665 has its special mark as emphatically the year of the Great Plague. * * * the London world was fearing what worse renewal of the pestilence might yet come, when suddenly the most drastic of sanitary reformers appeared on the scene, and what had remained of the Great Plague yielded at once to the great Disinfector. A fire—'such as had not been known in Europe since the conflagration of Rome under Nero, laid in ruins the whole city,' * * *."

but it was another century before the micro-organisms of disease ceased to be mere laboratory curiosities. (2 Encyclopaedia Britannica, 1949 Printing, p. 900). From the murk of almost total ignorance, man's knowledge of bacteriology however has today developed to such an extent that it seems fair to say that unless the ultimate decision of modern science be to devote its bacteria to the service of mankind rather than to its extermination, judgments of courts insuring the personal liberties of the citizen will become moot. In any event it is certainly true that the continued application of modern sanitary techniques to the abatement of the causes of contagious disease can guarantee to the individual a happier and more wholesome existence and a span of life which, judged through the eyes of those who lived 175 years ago, is incredible.

During this period there have been concomitant developments in the field of jurisprudence designed to keep pace with scientific progress in the field of public health. Through the years, those entrusted with the enactment of laws in aid of public health and safety have attempted to follow the advice of their scientists. The boundaries of legal development were indicated by this Court in *Jacobson* v. *Massachusetts*, 197 U. S. 11, 25, 26, 49 L. Ed. 643, 25 S. Ct. 358:

> "According to settled principles, the police power of a state must be held to embrace, at least, such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety. * * * It is equally true that the state may invest local bodies called into existence for purposes of local administration with authority in some appropriate way to safeguard the public health and the public safety. * * * A local enactment or regulation, even if based on the acknowledged police powers of a state, must always yield in case of conflict with the exercise by the general government of any power it pos-

sesses under the Constitution, or with any right which that instrument gives or secures.

"* * * This court has more than once recognized it as a fundamental principle that 'persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the state; of the perfect right of the legislature to do which no question ever was, or upon acknowledged general principles ever can be, made, so far as natural persons are concerned.' * * * *"

In this same case this Court reiterated the necessity for reevaluation of rights in the light of advancing knowledge:

"The possession and enjoyment of all rights are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, good order, and morals of the community. Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others. It is, then, liberty regulated by law."

In *Dupont* v. *District of Columbia*, 20 App. D. C. 477, 487, the then Court of Appeals of the District of Columbia expressed a similar view:

"The police power is the emanation of that inborn principle of human nature which led men into society and created the body politic to which sovereignty pertains for the purpose of securing safety, order and the common weal. To effect these ends, the government is intrusted with the power to make reasonable regulations restrictive of individual impulse. As population increases in rapid proportion, new physical conditions are developed which suggest, as reasonable, regulations and restraints of person and property before unknown. As civilization advances with increased

> and deeper knowledge, science makes new discoveries in respect of the dissemination of disease through infection, which necessitate radical changes in methods for the protection of human life."

The policy of Congress to provide, locally, progressive legislation consonant with scientific advances and constitutional principles is perhaps best demonstrated by a review of the basic power and the expression of it which led to the regulation under which respondent was convicted.

The exclusive legislative authority over the District of Columbia conferred upon Congress by Article I, Sec. 8, Clause 17 of the Constitution "* * * is sweeping and inclusive in character, to the end that Congress may legislate within the District of Columbia for every proper purpose of government." *Neild* v. *District of Columbia*, 71 App. D. C. 306, 110 F. 2d 246; *National Mutual Ins. Co. of District of Columbia* v. *Tidewater Transfer Co., Inc.* 17 U.S. L. Week 4536; *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 429, 5 L. Ed. 256. It includes authority to legislate in the exercise of the police power in the District of Columbia. *District of Columbia* v. *Brooke*, 214 U.S. 138, 53 L. Ed. 941, 29 S. Ct. 560; *Kindleberger* v. *Lincoln National Bank of Washington*, 81 U.S. App. D.C. 101, 155 F. 2d 281; *Dupont* v. *District of Columbia*, 20 App. D. C. 477; *Moses* v. *United States*, 16 App. D.C. 428, 50 L.R.A. 532.

Legislating for the District of Columbia, in the exercise of the police power Congress enacted laws and authorized the promulgation of regulations designed to carry into effect the developments of science in the field of public health and safety. Thus, Congress in 1878 provided for the appointment of a Health Officer of the District of Columbia and charged that officer with the duty of enforcing all laws and regulations relating to public health (App. 3); in 1892 authorized the Inspector of Plumbing to inspect houses in the District to see that the plumbing regulations are

duly observed (App. 15); and in the same year authorized the Commissioners of the District of Columbia to make and enforce all such reasonable and usual police regulations as they might deem necessary for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia (App. 8). These Acts were followed in 1896 by the Drainage Act (App. 14) requiring connection of dwellings with public sewers and water mains; in 1899 by provision for the condemnation of unsafe buildings (App. 15); in 1904 by provision for appointment of an Electrical Inspector (App. 16); in 1905 by authority to the Commissioners to make regulations for collection and disposal of garbage (App. 9); in 1906 by creation of the Board for the Condemnation of Insanitary Buildings (App. 17); and authority to the Commissioners of the District of Columbia to abate nuisances (App. 11). In 1939 the whole broad problem of preventing and controlling the spread of communicable diseases was placed in the hands of the Commissioners of the District of Columbia and they were authorized to make and enforce regulations to that end (App. 3).

In enacting this legislation the Congress was realistic. It was mindful of the fact that laws enacted for the protection of the public health are not self-executing. As Dr. Chapin[4] said in his Foreword to the Third Edition of "Public Health Law" (Tobey):

> "Sanitarians work toward the ideal that all people will in time know what healthful living is, and that they will in time reach that moral plane when they will practice what they know. While hopeful for the millennium we must work. Law is still neces-

[4] Dr. Charles V. Chapin, author of "Municipal Sanitation in the United States", quoted extensively by this Court in *California Reduction Co. v. Sanitary Reduction Works, supra.*

> sary. People still incline to acts which are not for their neighbor's good."

Recognizing the fact that a violation of the foregoing laws and regulations promulgated thereunder could result in a condition which "unlawfully annoys or doth damage to another"—Blackstone's definition of a nuisance[3]—Congress provided for the enforcement of such laws and regulations by means suitable for the discovery and abatement of nuisances. As a part of each new enactment in this field, Congress provided for the appointment of inspectors, directly or by necessary implication authorized such inspectors to enter and examine buildings, including private dwellings, provided for service of notice to owners or occupants to correct violations found on inspection, and for summary abatement or prosecution, or both, in case of failure or refusal to comply with such notice. In some cases refusal to permit such inspection was made punishable by the Act.

It is evident that these statutes and regulations contemplate inspection of private dwellings without warrant by municipal officials under reasonable conditions of fact in aid of the police power reposed in them.

The question might well be asked, as it apparently was by the majority below: What relationship has an inspection under such conditions to the preservation of the public welfare?

A wealth of regulatory precedent throughout the United States (Brief of Amicus Curiae in support of Petition for Certiorari, p. 3) supports the view that health officers regard such inspections as vital to the protection of the public health. The courts have had few opportunities to review this question, but the quotation set forth by Judge Holtzoff, in his dissent below, from *Hubbell* v. *Higgins*, 148 Iowa 36, 46, is cogent precedent:

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[3] Lewis's Blackstone, Commentaries on the Laws of England, Book III, p. 5.

> "The power of the Legislature to provide for inspection of premises in the interest of public safety and the public health is so well established that we will not enter upon a discussion of it. The right of inspection is incidental to the police power, and counsel cite no case wherein it was ever held that the exercise of such power violates any constitutional right of the citizen."

However, the most forceful argument to establish the importance of inspection to effective and salutary discharge of the obligation to preserve the public welfare lies in the statistics showing the effect of continuous inspection upon the abatement of nuisances locally during the very same year in which this conviction was obtained.

The Annual Report of the Commissioners of the District of Columbia for the fiscal year ending June 30, 1948—the period in which this case arose— shows that thousands of inspections were made by various officers and employees of the District of Columbia, resulting in the abatement of thousands of nuisances dangerous to health and safety (App. 21).

In the field involved herein, the Commissioners' Report shows that the Bureau of Public Health Engineering made 24,626 original inspections and 34,786 reinspections, which resulted in the abatement of 21,773 nuisances. Of those nuisances 7,565 consisted of rubbish and garbage. It is significant that only 1,019 *complaints* were received of rubbish and garbage (App. 27). Inspections necessarily revealed the remainder. The same situation prevailed in the rodent control program. While *complaints* of rats and mice totalled 1,355, harborage removal was accomplished in 3,363 cases and 7,515 locations were gassed, baited and trapped.

In controlling the spread of communicable diseases, the results of the enforcement policy of Congress are best demonstrated. The report of the Bureau of Preventable Diseases shows that 6 cases of typhoid fever were reported. The report on Typhoid Fever is:

> "A total of six cases with no deaths were reported in 1947, which constitutes the lowest incidence on record in the District of Columbia and the first year in which there were no deaths from this disease."

Obviously, this result was not achieved by inspection alone. Equally obvious is the fact that this result would not have been achieved without inspection, followed by abatement of the nuisances which are the breeding ground of that disease.

In the field of safety, the figures on Fire Prevention are impressive. Out of a total of 132,348 fire prevention inspections, 14,769 fire hazards were discovered and ordered abated (App. 24).

The direct relationship between the number of fires and inspections to detect fire hazards is demonstrated by the work of the Cincinnati Fire Department in drastically reducing the number of dwelling fires through stepped-up inspections of private dwellings. This report, including tabulations of inspections and fires over a twelve year period, is set forth in the Appendix, pp. 39-41.

The additional question might be asked: What relationship has inspection of *garbage* under such conditions to the preservation of the public welfare?

The court below compared the proposed inspection of respondent's dwelling with the possible invasion of a home during "the evening radio hour" by the over-zealous health inspector for the purpose of "* * * making bacteria counts on dinner dishes in the kitchen sink." The court then said: "These are extreme examples, perhaps, but they are no *sillier* than the precise words of the complaint in the present case, and we are dealing with doctrines and not with the presumable taste and sense of individual officials." (Emphasis supplied.)

It is apparent from this statement that the significance of the relationship between an accumulation of loose and uncovered garbage and fecal matter and the preservation of public health was not fully appreciated by that court.

The complaint upon the basis of which the health officer had sought entry for purpose of inspection alleged two conditions, the first of which was "an accumulation of *loose* and *uncovered garbage* and trash in the halls of said premises (R. 8, 17). (Emphasis supplied.)

Garbage, of course, in and of itself, constitutes a nuisance due to the odors emanating therefrom. *Dupont* v. *District of Columbia, supra.* But the danger to the health of the general public does not rest upon odor.

Garbage is an essential element to rat life in a congested urban community.

> "* * * Proper disposal of garbage will keep down the rat population. Rat killing is not a successful technique. The rat population is in direct ratio to available food. Thus rat eradication depends in great part upon limitation of the rodent's food supply." Smillie, Preventive Medicine and Public Health (The MacMillan Company, 1946) p. 312.

> "* * * the garbage from the apartments frequently overflowed the dilapidated uncovered containers furnished by the landlord to the tenants, and spilled upon the floor. * * * As a result of this deplorable situation, many large and bold rats, often four or five at a time, were observed in the cellars each time the tenants descended to dispose of their garbage and trash.
>
> "* * * the evidence showed that rats congregate only where there is available food." *State of Maryland*, for use of *Pumphrey* v. *Manor Real Estate & Trust Co., et al.*, 176 F. 2d 414, 415, 416 (Aug. 2, 1949).

Without rats, mankind would be freed from endemic typhus and plague. Smillie tells us that

> "Murine typhus is an endemic disease of rats and is transmitted to man by the bite of the rat flea. * * *" (*Op. cit. supra*, at 308.)

and that plague, the Black Death of Europe in the fourteenth century, and the bubonic plague and sylvatic plague of today, is transmitted to man by the bite of the rat flea that has been infected by biting an infected rodent. (*Id.* at 311-312.)

Nor are plague and typhus diseases of the past—except insofar as advancements in the science of medicine and sanitation have reduced the rates of death and of infection—for Smillie, writing in 1946, said that sylvatic plague had become so firmly established among rodents in the Rocky Mountain area that

> "* * * the danger of spread of sylvatic plague to the large urban centers of the middle west is very real." (*Id.* at 312.)

and a case of typhus in the District of Columbia was officially reported to the Health Department during the fiscal year ending June 30, 1948. (Report of the Commissioners, D. C., Bureau of Preventable Diseases, p. 177, App. 21, 25). Only this past August the Fourth Circuit Court of Appeals directed the entry of judgment against the United States of America, under the Federal Tort Claims Act, for wrongful death due to typhus contracted in Baltimore from the bite of a rat flea, because the United States

> "* * * was *negligent in failing* to make the repairs to rid the cellars of the rats and in failing to furnish sufficient janitor service *to keep the garbage in covered receptacles outside the houses* * * *". *State of Maryland, etc.* v. *Manor Real Estate & Trust Co., et al., supra, at* 417. (Emphasis supplied.)

The second phase of the complaint, that "certain of the persons residing therein had failed to avail themselves of the toilet facilities", though couched in euphemistic terms, nevertheless clearly conveyed the thought that human ex-

crement was scattered about in such manner that inspection would reveal it.

Human excrement, specifically the feces, constitutes the *only source* from which the numerous enteric infections may be acquired. Whether it be the bacilli of typhoid or of bacillary dysentery, or the intestinal parasites of hookworm, of pinworm, of tapeworm, or of amebic dysentery, the bacilli and the parasites pass directly from the infected human in his feces. The methods whereby the bacilli or parasite reach other humans and infect them, are numerous, and vary with the type of bacillus or parasite. The fly may carry the typhoid bacillus to food or drink, while the hookworm penetrates the human skin; the tapeworm usually reaches the human stomach in raw beef from cattle that have swallowed infected human feces. (Smillie, *op. cit. supra,* at 250-264.) Is it a stretch of the imagination to visualize human excrement which has been deposited outside the toilet being tracked by shoes to other parts of the house, even to other houses, and there picked up by children playing upon the floors?

Again and again Smillie tells us that proper disposal of human feces is the means to control these diseases.

> "Typhoid fever has now almost entirely disappeared from large municipalities and is declining rapidly in rural areas. Within fifty years an annual death rate of 30 per 100,000 population has been reduced more than a hundredfold to less than 0.3. There has been no corresponding decrease in virulence of the organism. This decline has resulted from an increased knowledge of the epidemiology of the disease and vigorous prosecution of control measures. Thus, typhoid fever need not be given much emphasis in clinical medicine, but must be given very serious consideration in preventive medicine, since it remains as a potential menace that must be kept under continuous surveillance. The typhoid bacillus has a worldwide distribution, and wherever proper control measures

are not carried out fully, and intelligently, the disease is sure to appear. Typhoid fever is one of the easiest to control of all the important infectious diseases. Man is its only host. The organism is spread to others through transfer of infected human feces." (*Id.* at 251).

"* * * Sanitation of the environment, with provision for proper disposal of human feces, is, as in typhoid fever, the key to control [of bacillary dysentery]. * * *" (*Id.* at 257.)

"Prevention of infection [from the large intestinal worm *Ascaris lumbricoides*] is simple in theory, difficult in practice. It is based upon the proper disposal of human feces." (*Id.* at 260.)

"Prevention of amebic dysentery is almost entirely the responsibility of the public health authorities. Improvement of sanitation, prevention of fly breeding, promotion of clean handling of food, and all other general measures that prevent the pollution of articles of human consumption by human feces, will aid in bringing the disease under control. * * *" (*Id* at 263).

Based upon the foregoing, the District of Columbia fails to see wherein the complaint made concerning respondent's premises was silly, as described by the majority of the United States Court of Appeals. (R. 24.)

The foregoing propositions underlay the testimony of the Surgeon General of the United States Public Health Service before a subcommittee of the Senate Committee on Banking and Currency, on February 11, 1949, in support of housing legislation (App. 33) (compare Housing Act of 1949, Public Law 171, 81st Congress, 1st Session, Chap. 338 approved July 15, 1949), wherein he traced the relationship between private inside flush toilets and the attack rates for enteric diseases.

Is the attack on community disease to end with the provision of sanitary facilities? (This Court has upheld the right of the District of Columbia, and other municipalities,

to compel dwellings to be equipped with sanitary facilities and be connected to the public sewer. *District of Columbia v. Brooke, supra; Hutchinson v. Valdosta*, 227 U.S. 303, 33 S. Ct. 290, 57 L. Ed. 520.) Must the health officer wait until he receives a complaint under oath which he can present to a magistrate, before he is permitted to see whether these facilities are being used? This Court did not say, in *Jacobson v. Massachusetts, supra*, merely that a healthy citizen might be required to accept into his keeping an original container of smallpox vaccine, but upheld the right of the state *to compel its use*, through innoculation by a physician, even against a contention that personal rights were invaded. Are property rights more sacred than personal rights?

One hundred years ago Lemuel Shattuck, whose report to the Massachusetts State Legislature "has become a foundation stone for public health and preventive medicine in America" (Smillie, *op. cit. supra*, ix), pointed out the need for determining the *causes* of diseases which were taking a dreadful toll in human lives, and for taking effective means to remove such causes: (App. 30)

> "* * * If the same exact and definite information could be obtained, as to the causes of cholera, dysentery, scarlatina, typhus, consumption, and other grave diseases, to which we are subject, and as to the particular condition of the individual which they most easily affect, how much might be done for the avoidance of those diseases by the removal of their causes! How many lives might be saved, how much suffering might be prevented! Does not the spirit of the age then demand the approval of a measure which promises to do this great,—most important work!" Shattuck, Report of a General Plan for the Promotion of Public and Personal Health, the Sanitary Commission of Massachusetts, 1850 (Harvard University Press, 1948) 276.

Today, when we have the knowledge of the causes of many of the diseases mentioned by Shattuck, and have established their sources in human excrement and in rats, and established the relationship of garbage to rats, are not the following prophetic words of Lemuel Shattuck applicable to the case presently before this Court?

> "* * * If we, as social beings, make no effort to elevate the sanitary condition of those around us by removing the causes of disease, we violate a known duty, and make ourselves justly guilty and liable to punishment; and we shall inevitably be punished, either by suffering sickness, or by death, or in some other way. If a municipal or state authority neglects to make and execute those sanitary laws and regulations on which the health and life of the people depend, they violate a known duty, and are justly chargeable with guilt and its consequences; * * * May it not then appear that many a law-maker, many a public administrator, and many a private individual, has been guilty of robbing others, and of robbing himself, of health and of life,—all that is dear on earth;—guilty of murders and of suicides;—and none the less fearfully real and punishable because they were unintended? * * * " (Id. at 277, App. 31).
>
> "* * * And it is the duty of the State to extend over the people its guardian care, that those who cannot or will not protect themselves, may nevertheless be protected; and that those who can and desire to do it, may have the means of doing it more easily. This right and authority should be exercised by wise laws, wisely administered; and when this is neglected the State should be held answerable for the consequences of this neglect. If legislators and public officers knew the number of lives unnecessarily destroyed, and the suffering unnecessarily occasioned by a wrong movement, or by no movement at all, this great matter would be more carefully studied, and errors would not be

so frequently committed. * * *" (Id. at 304, App. 32).

Many courts of the United States have subscribed to the view that garbage is potentially a grave menace to the welfare of the community; among them, suprisingly enough, the Court of Appeals of the District of Columbia, which in 1902 stated in *Dupont* v. *District of Columbia, supra*:

> "Garbage * * * is a thing of almost hourly accumulation in every occupied house of a large city, and is therefore a constant menace to the health and comfort of thousands of people."

In 1905, in *California Reduction Company* v. *Sanitary Reduction Works*, 199 U. S. 306, 322, 50 L. Ed. 204, 211, 26 S. Ct. 100, this Court in upholding the validity of garbage regulations of San Francisco, held that:

> "* * * The garbage and refuse matter were all together, on the same premises, and, as a whole or in the mass, they constituted a nuisance which the public could abate or require to be abated, and to the continuance of which the community was not bound to submit."

And, at the same term, in *Gardner* v. *Michigan*, 199 U. S. 325, 50 L. Ed. 212, 26 S. Ct. 106, this Court, again dealing with the validity under the Fourteenth Amendment of garbage ordinances, cited with approval the opinion of the Court of Appeals in *Dupont* v. *District of Columbia, supra*.

In summary then, it seems clear that until the opinion below, the informed viewpoint was that the Congress properly directed and authorized inspection of dwellings without warrant as a necessary means of saving the populace harmless from the ravages of infectious disease directly attributable to the two nuisances complained of in this case.

The opinion of the United States Court of Appeals for the District of Columbia can have no other effect than to strike

down all such inspections on the sole ground that they are violative of the Fourth Amendment of the Constitution.

The issue is whether the opinion is erroneous.

II

THE FOURTH AMENDMENT WAS NOT INTENDED TO, AND DOES NOT, APPLY TO INSPECTION ENTRIES OF PREMISES FOR THE PRESERVATION OF THE PUBLIC HEALTH OR SAFETY.

In his dissenting opinion Judge Holtzoff said:

> "The Fourth Amendment was intended and is to be construed to apply only to criminal prosecutions and proceedings of a quasi-criminal nature for the enforcement of penalties. Its purpose is to limit and regulate searches conducted with a view to discovering and seizing books, papers, and objects to be used as evidence in a criminal proceeding or in an action for the enforcement of a penalty; and to protect any person against the use of evidence in a criminal or penal proceeding, if it has been procured from him by an unreasonable search and seizure. It does not affect the administration of law if criminal prosecutions or suits for penalties are not involved. It does not apply to inspections, if no seizure is intended." (R. 31.)

Petitioner is wholly in accord with the conclusions of Judge Holtzoff and the reasons which he set forth in his opinion to support such conclusions. Petitioner relies upon the argument and cases cited by Judge Holtzoff, but for the sake of brevity has not repeated them in this brief.

The historical background of the Fourth Amendment contained in the opinion of this Court in *Boyd* v. *United States*, 116 U. S. 616, 29 L. Ed. 746, provides the rationale for the rule that the Amendment applies only to

criminal cases. In that case Mr. Justice Bradley, writing for the Court, quoted at length from the judgment of Lord Camden holding invalid general search warrants, in *Entick v. Carrington,* 19 Howell St. Tr., 1029, in part as follows:

> "The great end for which men entered into society was to secure their property. That right is preserved sacred and incommunicable in all instances where it has not been taken away or abridged by some public law for the good of the whole. The cases where this right of property is set aside by positive law are various. Distresses, executions, forfeitures, taxes, etc., are all of this description, wherein every man by common consent gives up that right for the sake of justice and the general good. By the laws of England, every invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my license but he is liable to an action though the damage be nothing; which is proved by every declaration in trespass where the defendant is called upon to answer for bruising the grass and even treading upon the soil. If he admits the fact, he is bound to show by way of justification that some positive law has justified or excused him. The justification is submitted to the judges, who are to look into the books and see if such a justification can be maintained by the text of the statute law or by the principles of the common law. If no such excuse can be found or produced, the silence of the books is an authority against the defendant and the plaintiff must have judgment. According to this reasoning, it is now incumbent upon the defendants to show the law by which this seizure is warranted. If that cannot be done, it is a trespass. * * * (116 U.S. 616, 627).
>
> "After a few further observations, His Lordship concluded thus: 'I have now taken notice of everything that has been urged upon the present point; and upon the whole we are all of opinion that the warrant to seize and carry away the party's

papers in the case of a seditious libel is illegal and void.'" (*Id.* at 629).

This Court said of the judgment in *Entick* v. *Carrington*

> "As every American statesman, during our revolutionary and formative period as a nation, was undoubtedly familiar with this monument of English freedom, and considered it as the true and ultimate expression of constitutional law, it may be confidently asserted that its propositions were in the minds of those who framed the Fourth Amendment to the Constitution, and were considered as sufficiently explanatory of what was meant by unreasonable searches and seizures. * * *" (*Id.* at 626-627).

Thus, at common law "every invasion of private property, be it ever so minute, is a trespass", but entry under "some public law for the good of the whole", was justification and a valid defense to an action of trespass based upon the entry. The entry, considered by Lord Camden, "to seize and carry away papers in the case of a seditious libel" which was "illegal and void", was a proceeding having as its sole object the apprehension and punishment of the author of the libel. It was this type of entry which could receive no justification from any public law, and left the entrant a naked trespasser.

It is not strange, then, that this Court held that

> "As, therefore, suits for penalties and forfeitures, incurred by the commission of offenses against the law, are of this quasi criminal nature, we think that they are within the reason of criminal proceedings for all the purposes of the Fourth Amendment of the Constitution * * *." (*Id.* at 634)

because the penalty or forfeiture, though through civil proceedings, was as surely a punishment for the offense against

the law as would have been a fine imposed after conviction upon indictment, and the entire proceeding was for suppression of crime and the punishment of the criminal; the search had as its sole object the securing of evidence to prove the crime and insure the criminal's punishment.

But these were not the objects in the cases which were cited by Judge Holtzoff, in his dissenting opinion, as illustrations of non-criminal cases in which the Fourth Amendment was not applicable. This was the distinguishing feature.

In *Blackmer* v. *United States,* 284 U. S. 421, fines and costs, to be satisfied out of property of petitioner which had been seized by order of the court, had been imposed upon Blackmer for his failure to respond to subpoenas served upon him in France and requiring him to appear as a witness at a criminal trial in the Supreme Court of the District of Columbia. The action was taken pursuant to authority of the Act of July 3, 1926, 44 Stat. 835, which authorized issuance of subpoenas to witnesses in criminal cases who were citizens of the United States but were outside the territorial limits, and required personal service upon them by the American consul; upon failure to appear in response to the subpoena, the Act authorized issuance of an order to show cause why they should not be held in contempt, which order was also required to be personally served, after which a hearing, by the same court which had issued both subpoena and order, was required and, upon proof of the charge, penalty could be imposed. In the opinion sustaining the fines and the method of their satisfaction, this Court said, at pages 440 and 441:

> "* * * The further contention is made that, as the offense is a criminal one, it is a violation of due process to hold the hearing, and to proceed to judgment, in the absence of the defendant. The argument misconstrues the nature of the proceeding. 'While contempt may be an offense against the law and subject to appropriate punishment, certain it

is that since the foundation of our government proceedings to punish such offenses have been regarded as *sui generis* and not "criminal prosecutions" within the Sixth Amendment or common understanding.' *Myers* v. *United States*, 264 U. S. 95, 104, 105. See, also, *Bessette* v. *Conkey Co.*, 194 U. S. 324, 336, 337; *Michaelson* v. *United States*, 266 U. S. 42, 65, 66; *Ex parte Grossman*, 267 U. S. 87, 117, 118. The requirement of due process in such a case is satisfied by suitable notice and adequate opportunity to appear and to be heard. Cf. *Cooke* v. *United States*, 267 U. S. 517, 537. * * *

"*Second. What has already been said also disposes of the contention that the statute provides for an unreasonable search and seizure in violation of the Fourth Amendment.* It authorizes a levy upon property of the witness at any place within the United States in the manner provided by law or rule of court for levy or seizure under execution. A levy in such a manner, either provisionally or finally, to satisfy the liability of the owner is not within the constitutional prohibition." (Emphasis supplied.)

To reach the result that the Fourth Amendment was not violated by the seizure of Blackmer's property, out of which the fine was satisfied, it was not necessary to hold that the proceeding was *sui generis* and therefore not a "criminal prosecution" within common understanding, because even if the contempt be called a crime the seizure was not for the purpose of securing evidence of this crime, nor of the fruits of this crime, nor of the tools or implements by which this crime was committed—it had no relation to the apprehension or successful prosecution of the criminal.

As we conceive the rule deducible from the foregoing authorities, it is: A law or regulation purporting to authorize the invasion of premises without a search warrant for the purpose of securing evidence of a crime committed or supposed to have been committed, or of securing the fruits

of the crime, or of securing the tools or implements by which the crime was committed, having as its objective the punishment of the criminal, at common law would have been illegal and void, no justification for trespass, and therefore an unreasonable search and seizure within the meaning of the Fourth Amendment. On the other hand, a law or regulation which authorizes the invasion of premises without a search warrant for the purpose of securing or compelling the correction of a condition dangerous to the public health or safety, and not having as its object the securing of evidence of crime in order to punish the criminal, does provide justification for what would otherwise be trespass, as a "public law for the good of the whole", and is therefore not within the inhibitions of the Fourth Amendment.

The regulation under which the health inspector in this case sought to enter respondent's dwelling was of this latter class. It was enacted by the Congress in the exercise of the police power to protect the health of the community, and had as its purpose, not the prosecution of respondent but the correction of a condition which it had denominated, under decisions of this Court, a nuisance. If that nuisance were found to exist in respondent's premises, prosecution would not necessarily have followed. Under the Nuisance Act (App 11-14) the District authorities could have entered and summarily abated the nuisance and charged the cost of abatement against the property. Even a criminal prosecution for failure to abate a nuisance after notice to do so would not have as its object the assessment and collection of a fine, but the promotion of the public health (*District of Columbia* v. *Brooke*, 29 App. D. C. 563, 569) and is a proper method of procuring such abatement (*District of Columbia* v. *Brooke*, 214 U.S. 138, 152).

The question whether, upon a prosecution for failing to abate a nuisance after service of notice to do so, the evidence obtained by the inspection would have been excluded under the doctrine of *Weeks* v. *United States*, 232 U. S. 383,

58 L. Ed. 652, 34 S. Ct. 341, is not before the Court. In the instant case no entry was effected; no evidence was obtained by seizure or by visual observation; no evidence obtained as a result of any inspection was introduced or sought to be introduced in evidence against respondent. Respondent was convicted, not of maintaining a nuisance, but of resisting the entry of the health inspector.

Petitioner's position is that the Congress could validly authorize the entry of the dwelling for the purpose of inspection. Since the proposed inspection was for a purpose not inhibited by the Fourth Amendment, the proposed entry would have been lawful and respondent could not lawfully invoke the doctrine of self-help to resist that lawful entry.

III

DECISIONS OF THIS COURT SUPPORT THE POLICE POWER EXERCISE OVER CONSTITUTIONAL OBJECTIONS.

The majority of the Court of Appeals recognized that the proposed inspection by the health inspector was in exercise of the "police power", but declared that

> "* * * health laws are enforced by the police power and are subject to the same constitutional limitations as are other police powers. It is wholly fallacious to say that any particular police power is immune from constitutional restrictions" (R. 27)

and held that the Fourth Amendment applies (R. 19) and therefore all the warrant requirements thereof were applicable.

In this view of the Court of Appeals, the present case is an instance of a head-on collision between a constitutional provision and an attempted exercise of the "police power",

when used in the peculiar sense of that inherent power of the state exercised to preserve the public health, safety and welfare. Nor is it the first case in which such collision has occurred. Nor has this Court universally held that the "police power" must bow before the constitutional provision which was invoked to stay its action, as the Court of Appeals has implied.

In *Nebbia* v. *New York*, 291 U.S. 502, 524, this Court, in upholding the conviction of a storekeeper for selling milk at a price below that allowed by an order promulgated by a state board pursuant to statutory authority, held respecting the exercise of the police power:

> "* * * Touching the matters committed to it by the Constitution, the United States possessses the power, as do the states in their sovereign capacity touching all subjects jurisdiction of which is not surrendered to the federal government, as shown by the quotations above given. These correlative rights, that of the citizen to exercise exclusive dominion over property and freely to contract about his affairs, and that of the state to regulate the use of property and the conduct of business, are always in collision. No exercise of the private right can be imagined which will not in some respect, however slight, affect the public; no exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his property. But subject only to constitutional restraint the private right must yield to the public need.
>
> "The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law

shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained. It results that a regulation valid for one sort of busines, or in given circumstances, may be invalid for another sort, or for the same business under other circumstances, because the reasonableness of each regulation depends upon the relevant facts"

In numerous other cases this Court has held that the particular constitutional provision invoked either did not apply, or that the police power exercise was a proper limitation upon the right granted by the constitutional provision. *Mugler* v. *Kansas*, 123 U.S. 623; *Lawton* v. *Steele*, 152 U.S. 133; *Jacobson v. Massachusetts*, 197 U.S. 11; *California Reduction Co.* v. *Sanitary Reduction Works*, 199 U.S. 306; *Manigault* v. *Springs*, 199 U.S. 473; *District of Columbia* v. *Brooke*, 214 U.S. 138; *Eubank v. Richmond*, 226 U.S. 137; *Hutchinson* v. *City of Valdosta*, 227 U.S. 303; dissenting opinion of Brandeis, J. in *Adams* v. *Tanner*, 244 U.S. 590; *Calhoun* v. *Massie*, 253 U.S. 170; *Block* v. *Hirsh*, 256 U.S. 135; *Gitlow* v. *New York*, 268 U.S. 652; *Miller* v. *Schoene*, 276 U.S. 272; *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379; *Queenside Hills Realty Co.* v. *Saxl*, 328 U.S. 80.

It is petitioner's position that a similar adjustment must be made in the instant collision between the exercise of the police power in protection of the public health and safety, and the guarantees of the Fourth Amendment of the Constitution.

While no case has been found in which the bar of this Amendment has been raised to stay the exercise of the "police power" to protect the public health and safety (which would appear to demonstrate that such entries and inspections in aid of health laws intended to protect the

* *Euclid* v. *Ambler Realty Co.*, 272 U.S. 365;

public from disease and epidemic "have never been thought to raise any Constitutional problem", see *Chaplinsky* v. *New Hampshire*, 315 U.S. 568, 571), this Court has, in at least several cases, upheld statutes or ordinances which necessarily required "inspection entries" and "searches" of private premises to determine whether the statute or ordinance had been complied with.

This Court, in *District of Columbia* v. *Brooke, supra*, upheld the Drainage Act of the District of Columbia against constitutional attack. That Act required certain lots to be connected to the public sewer and public water main and the work to be done in accordance with the regulations governing plumbing and house drainage in the District (214 U.S. at 140). The lots involved were improved by dwellings (Id. at 149). It would manifestly be impossible for the municipal authorities to determine whether the connection to the public sewer and water main had been made

> "* * * in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind shall flow into said sewer." (App. 14)

as required by the statute, without entering the dwelling to inspect the work. And this court pointed out that performance of the statutory duties of the lot owners could be compelled by criminal prosecution (214 U.S. at 152). The decision was cited with approval in *Hutchinson* v. *City of Valdosta, supra.*

Miller v. *Schoene*, 276 U.S. 272, upheld a Virginia statute aimed at the eradication of cedar rust by the condemnation and destruction of infected red cedar trees. This statute required the state entomologist, under certain conditions, "to make a preliminary investigation of the locality . . . to ascertain if any cedar tree or trees . . . are the source of, harbor or constitute the host plant for the said disease

. . ." The state entomologist could not perform this duty without making a close examination of individual cedar trees and, when such trees might grow within the curtilage (unless the Fourth Amendment does not extend to the boundary of the curtilage) he would be required to *enter and search* in the performance of his duty.

In fact the Court of Appeals has, since its judgment in the instant case, declared emphatically that the Act for the Condemnation of Insanitary Buildings (App. 17-18) was "a constitutional act", although this Act expressly provided:

> "* * * Said Board, the members thereof, and all persons acting under its authority, may, between the hours of 8 o'clock antemeridian and 5 o'clock postmeridian, peaceably enter into and upon any and all lands and buildings in said District for the purpose of inspecting the same. * * *"

and prohibits refusal to permit lawful inspections and interference with members of the Board or others acting under their authority, with penalties annexed for any violation of the Act. *Minnie Keyes* v. *K. E. Madsen, et al.*, U.S. App. D.C., No. 9969, decided December 16, 1949.

The fact that this Court has sustained the exercise of the police power over the constitutional objection, does not mean that the police power is subject to no restraints, for it has always been subject to the rule of reasonableness, that is, that the object to be attained is reasonably within the power of the state and that the means used have a real and substantial relation to the accomplishment of such object—and always, that the activities be carried out in a reasonable manner. This rule of reasonableness is a requirement of due process, *Nebbia* v. *New York*, *supra*, and since this Court has held the search and seizure provisions of the Fourth Amendment encompassed within due process, *Wolf* v. *Colorado*,* 17 Law Week 4638, the measure of what is reasonable under the Fourth Amendment should be the same as under the Fifth and Fourteenth Amendments.

* *Wolf v. Colorado*, 338 U.S. 25

As has been shown in Part I of this argument, the existence of loose and uncovered garbage and human excrement upon the floors of a dwelling constitutes a direct hazard to the general health—even lives—of the community. The elimination of this condition is, therefore, a proper object for the exercise of the police power. Compare *Hutchinson* v. *City of Valdosta, supra.* It would appear evident, from a consideration of the results which can flow from the existence of such condition, that the minimum activity which is *necessary* to discover and abate such condition is a reasonable exercise of the police power.

While the invited visitor, or the deliveryman or postman lawfully on the premises, may observe this filthy condition if it is in the entry hall or the living room ("public"), and be urged by his innate sensibilities or by consideration for the neighbors to make sworn complaint of the actual existence of such filth, those portions of the house normally visited only by the "lone housewife" ("hidden") will scarcely be complained of. Only if this filth is "public" could probable cause be established sufficient to obtain a magistrate's warrant to authorize a health inspector's search. The "hidden" filth would continue to exist. But the effect of the filthy condition upon the public health will not be measured by its location within the dwelling, whether it be "public" or "hidden".

It follows, necessarily, that if inspection without such probable cause as will support a magistrate's warrant is the only means to discover and to abate "hidden" filth, equally dangerous to health, such an inspection has a real and substantial relationship—is even necessary—to the accomplishment of the police power objective, and is therefore permissible, despite alleged infringement of the Fourth Amendment.

> "* * * The police power may be exerted in the form of state legislation *where otherwise the effect may be to invade rights guaranteed by the Fourteenth*

> *Amendment* only when such legislation bears a real and substantial relation to the public health, safety, morals, or some other phase of the general welfare." *Liggett Co.* v. *Baldridge*, 278 U.S. 105, 111-112. (Emphasis supplied.)

The Fourth Amendment can no more be considered a privilege to conceal upon private premises filth which directly endangers the health of the community, than can the First Amendment be considered a privilege to arise in a crowded theatre and cry "Fire". *Schenck* v. *United States*, 249 U.S. 47, 52.

The Court of Appeals, in holding that the Fourth Amendment prevents the municipality from protecting the public health by means of "inspection entries" without search warrants, seems to require that now

> "* * * we must consider the two objects of desire, both of which we cannot have, and make up our minds which to choose." Mr. Justice Holmes, dissenting in *Olmstead* v. *United States*, 277 U.S. 438, 470.

Were the choice solely between the interest of privacy and the interest of bringing criminals to trial and punishing all those guilty of misdemeanors (see Mr. Chief Justice, then Associate Justice, Vinson, in *Nueslein* v. *District of Columbia*, 73 U.S. App. D.C. 85, 90, 91, 115 F. 2d 690, 695-696) petitioner would not be here before this Court. But the choice in the instant case is between the interest of privacy and the interest of preserving the lives and health of the citizens of the District of Columbia.

It is submitted, therefore, that the Fourth Amendment does not prohibit an inspection or a search, without a warrant, of private premises by the health inspector or other officer in the enforcement of laws intended to protect and preserve the public health and safety.

This construction, contended for by petitioner, does not mean that the householder must always open his door when-

ever an official raps and claims to be a health inspector. The Court of Appeals expressed these fears:

> "Is the evening radio hour to be at the whim of a zealous officer making bacteria counts on dinner dishes in the kitchen sink? Is the informality of a lone housewife doing the morning chores to be embarrassed by the unpreventable company of a benign, but nevertheless strange, searcher for the unclean and the unwholesome?" (R. 24)

and declared that the only way to prevent their materialization was to raise the bar of the Fourth Amendment to deny him entry unless he possess a search warrant issued by a magistrate (R. 22), upon probable cause and supported by oath or affirmation. (App. 1)

Petitioner replies that the rule of reasonableness is applicable, and that the answers to the questions of the Court of Appeals will depend upon all the facts and circumstances of the particular case. With a virulent epidemic raging, the bacteria count and the search for the unclean and unwholesome might well be urgent; while in the absence of such circumstances these activities could be carried on at other hours, or after advance notice and making an appointment with the "lone housewife."

Nowhere in the record is there any intimation that respondent claimed that the health inspector had made any unreasonable demand, other than his demand to inspect the dwelling without producing a warrant.

We submit that the health inspector was not required to obtain a warrant to inspect respondent's premises in his effort to carry out duties imposed upon him by the Regulations of the Commissioners, as well as Acts of Congress, which had as their object the protection of the health of the community; and respondent's acts of hindering and interfering with the health inspector were unjustified, and her conviction of such charge was proper.

IV

CONCLUSION

It is respectfully submitted that the judgment of the United States Court of Appeals for the District of Columbia Circuit should be reversed, and the judgment of the trial court affirmed.

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INDEX

CONSTITUTION OF THE UNITED STATES

STATUTES

TEXTS

MISCELLANEOUS

APPENDIX.

Provisions of Constitution.

Article 1, Section 8, Clause 17 of the Constitution provides:

> "*The Congress shall have power* * * * To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, * * *."

The Fourth Amendment to the Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Search Warrants.

Act of March 3, 1901, 31 Stat. 1337, ch. 854, § 911; and of April 5, 1938, 52 Stat. 199, ch. 72, § 3; (D. C. Code, 1940 ed., Section 23-301):

> "Upon complaint, under oath, before the police court, or a United States commissioner, setting forth that the affiant believes and has good cause to believe that there are concealed in any house or place articles stolen, taken by robbers, embezzled, or obtained by false pretenses, forged or counterfeited coins, stamps, labels, bank bills, or other

instruments, or dies, plates, stamps, or brands for making the same, books or printed papers, drawings, engravings, photographs, or pictures of an indecent or obscene character, or instruments for immoral use, or any gaming table, device, or apparatus kept for the purpose of unlawful gaming, or any lottery tickets or lottery policies, or any book, paper, memorandum, or device for or used in recording any bet or deposit of money or thing or consideration of value received for any share, ticket, certificate, writing, bill, slip, or token in any pool or lottery or as a wager on or in connection with any race, game, contest, election, or other gambling transaction or device of an unlawful nature as defined in sections 22-1501, 22-1503, 22-1504, 22-1505, 22-1507, 22-1508, particularly describing the house or place to be searched, the things to be seized, substantially alleging the offense in relation thereto, and describing the person to be seized, the said court or United States commissioner may issue a warrant either to the marshal or any officer of the Metropolitan Police commanding him to search such house or place for the property or other things, and, if found, to bring the same, together with the person to be seized, before the police court or United States commissioner issuing said warrant, as the case may be.

"The said warrant shall have annexed to it, or inserted therein, a copy of the affidavit upon which it is issued, and may be substantially in the form following:

"'Whereas there has been filed before..... an affidavit, of which the following is a copy (here insert). These are therefore to command you to enter (here describe the place) and there diligently search for the said articles, goods, or chattels in the said affidavit described, and that you bring the same, or any part thereof, found on said search and also the body of ..... before the police court, or United States commissioner, as the case may be, to be dealt with and disposed of according to law.'"

Organic Act of District of Columbia—Health Officer.

Act of June 11, 1878, 20 Stat. 102, ch. 180, (Organic Act of the District of Columbia):

"Sec. 8. That in lieu of the board of health now authorized by law, the Commisioners of the District of Columbia shall appoint a physician as health-officer, whose duty it shall be, under the direction of the said Commissioners, to execute and enforce all laws and regulations relating to the public health and vital statistics, and to perform all such duties as may be assigned to him by said Commissioners; and the board of health now existing shall, from the date of the appointment of said health officer, be abolished.

"Sec. 9. That there may be appointed by the Commissioners of the District of Columbia, on the recommendation of the health-officer, a reasonable number of sanitary inspectors for said District, not exceeding six, to hold such appointment at any one time, of whom two may be physicians, and one shall be a person skilled in the matters of drainage and ventilation; and said Commissioners may remove any of the subordinates, and from time to time may prescribe the duties of each; and said inspectors shall be respectively required to make, at least once in two weeks, a report to said health-officer, in writing, of their inspections, which shall be preserved on file; and said health-officer shall report in writing annually to said Commissioners of the District of Columbia, and so much oftener as they shall require."

Communicable Diseases.

Act of August 11, 1939, 53 Stat. 1408, Ch. 691, *as amended* August 8, 1946, 60 Stat. 921, ch. 871, Secs. 1, 8 and 9 (D. C. Code, 1940 ed., Supp. VI, Secs. 6-118, 6-119f, 6-119g):

"The Commissioners of the District of Columbia are hereby authorized and empowered to promulgate and enforce all such reasonable rules and regulations as they may deem necessary to prevent and control the spread of communicable and preventable diseases in the District of Columbia, including the authority and power to provide for the isolation, quarantine, and restriction of the movements of persons affected by or believed, upon probable cause, to be affected by communicable disease and of persons who are or are believed, upon probable cause, to be carriers of communicable disease."

* * * * * * * *

"Sec. 8. The Health Officer may, without fee or hinderance, enter, examine, and inspect all vessels, premises, grounds, structures, buildings, and every part thereof in the District of Columbia for the purpose of carrying out the provisions of this Act and the regulations issued hereunder. The owner or his agent or representative and the lessee or occupant of any such vessel, premises, grounds, structure, or building, or part thereof, and every person having the care and management thereof shall at all times when required by any such officer or employee give them free access thereto and refusal so to do shall be punishable as a violation of this Act.

"Sec. 9. It shall be unlawful for any person knowingly to obstruct, resist, oppose, or interfere with any person performing any duty or function under the authority of this Act or any regulation promulgated thereunder."

Regulations to Prevent and Control the Spread of Communicable and Preventable Diseases.

"SECTION 1. *Definitions.*—The following definitions shall apply to certain words and terms in these regulations:

(a) *Health Officer.*—The term 'Health Officer' means the Health Officer of the District of Columbia and his duly authorized agents.

(b) *Communicable Disease.* — A communicable disease for the purpose of these regulations means:

Amebiasis (amebic dysentery)
Ancylostomiasis (hookworm)
Anthrax
Botulism
Chancroid
Chickenpox (varicella)
Cholera (Asiatic)
Conjunctivitis (ophthalmia neonatorum)
Conjunctivitis (suppurative, pink eye)
Diarrhea (epidemic of children and adults)
Diarrhea (epidemic of the newborn)
Diphtheria
Diphtheria carrier
Dysentery (amebiasis or amebic)
Dysentery (bacillary)
Encephalitis (infectious)
Erysipelas
Food infection (salmonellosis)
Food poisoning (staphylococcus intoxication)
German measles (rubella or rötheln)
Glanders
Gonorrhea
Granuloma inguinale
Hemorrhagic jaundice (Weil's disease)
Impetigo contagiosa
Influenza
Kerato-conjunctivitis
Leprosy
Lymphocytic choriomeningitis
Lymphogranuloma venereum
Malaria
Measles (rubeola)
Meningitis (meningococcus, meningococcemia)
Mumps (epidemic parotitis)
Paratyphoid fever
Plague (bubonic and pneumonic)

Pneumonia (including virus pneumonia)
Poliomyelitis (infantile paralysis)
Psittacosis (parrot fever)
Rabies in animals
Rabies in man
Rheumatic fever (acute)
Rocky Mountain spotted fever
Scarlet fever (scarlatina)
Smallpox (variola)
Staphylococcal infections
Streptococcal infections (ceptic sore throat, erysipelas and puerperal sepsis)
Syphilis
Tetanus
Trachoma
Trichinosis
Tuberculosis
Tularemia
Typhoid carrier
Typhoid fever
Typhus fever (louse-borne)
Typhus fever (murine)
Undulant fever (Malta fever)
Whooping cough (pertussis)
Yellow fever

(c) *Communicable Disease Carrier.*—A communicable disease carrier means a person who harbors in his body the infectious agent of a communicable disease, but who, at the time, is apparently in good health. For the purpose of these regulations, communicable disease carrier means:
Typhoid carrier
Paratyphoid carrier
Diphtheria carrier
Amebic dysentery carrier
Gonorrhea carrier
Meningococcus carrier
Syphilis carrier

(d) *Infectious Agent.*—Infectious agent means a living micro-organism or virus capable, under

favorable conditions, of causing a communicable disease. Infectious agent also means 'germ,' 'organism,' 'micro-organism,' and 'virus.'

(e) *Contact.*—A contact means a person or animal that has been sufficiently near a person suffering from a communicable disease, a communicable disease carrier, or an animal or object harboring the infectious agent to make possible the direct or indirect transmission of the infectious agent to him.

(f) *Susceptible.*—A susceptible is a person or animal who is not known to have become immune to the particular disease in question by natural or artificial process.

(g) *Restriction of Movement.*—Restriction of movement means the limitation of an individual in his or her association with persons not known to be immune to the communicable disease in question.

(h) *Isolation.*—Isolation means the limitation of freedom to a specified room or rooms of a person who is suffering from, or suspected of suffering from, a communicable disease, or who is a communicable disease carrier, and the exclusion of all persons except attendants from association with such a person.

(i) *Quarantine.*—Quarantine means the limitation of freedom to a specified room, building, or area of any person or animal exposed to a communicable disease for a period of time equal to the longest usual incubation period of the disease to which they have been exposed, or until found free from infection by laboratory methods, and the exclusion of susceptibles from association with such person or animal.

(j) *Placard.*—A placard is an official notice, written or printed, and posted by the Health Officer as a warning of the presence of a communicable disease on the premises.

(k) *Disinfection.*—Disinfection is the process of destroying the vitality of disease-producing organisms or virus by physical or chemical means.

(l) *Renovation.*—By renovation is meant, in addition to cleansing, such repapering, painting,

whitewashing, or other alteration of such part of a human habitation as the Health Officer may deem to be necessary to place the same in a satisfactory and sanitary condition.

(m) *Cleansing.*—Cleansing signifies the removal of infectious material by scrubbing, washing, and exposure to sunlight and air.

(n) *Food Handler.*—The term food handler means any person engaged in the preparation, manufacture, storage, sale, exchange or delivery of food, drink, confectionary or condiment for man, or who comes in contact with any eating, drinking or cooking dishes or utensils employed in the service of such commodities to others."

Joint Resolution of 1892.

Section 2 of the Joint Resolution approved February 26, 1892, 27 Stat. 394, Res. No. 4, D. C. Code, 1940 ed., Sec. 1-226:

"The Commissioners of the District of Columbia are hereby authorized and empowered to make and enforce all such reasonable and usual police regulations in addition to those already made under the act of January twenty-sixth, eighteen hundred and eighty-seven, as they may deem necessary for the protection of lives, limbs, health, comfort and quiet of all persons and the protection of all property within the District of Columbia."

Use and Occupancy Regulations.

Commissioners' Regulations Concerning the Use and Occupancy of Buildings and Grounds, promulgated April 22, 1897, amended July 28, 1922:

* * * * * * * * * * *

"2. That it shall be the duty of every person occupying any premises, or any part of any premises, in the District of Columbia, or if such prem-

ises be not occupied, of the owner thereof, to keep such premises or part, * * * clean and wholesome; if upon inspection by the Health Officer * * * it be ascertained that any such premises, or any part thereof, or any building, * * * is not in such condition as herein required, the occupant or occupants of such premises or part, or the owner thereof, * * * shall be notified thereof and required to place the same in a clean and wholesome condition; and in case any person shall fail or neglect to place such premises or part in such condition within the time allowed by said notice he shall be liable to the penalties hereinafter provided.

* * * * * * * * * * *

"10. That the Health Officer shall examine or cause to be examined any building supposed or reported to be in an unsanitary condition * * *.

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"12. That any person violating, or aiding or abetting in violating, any of the provisions of these regulations, or interfering with or preventing any inspection authorized thereby, shall be deemed guilty of a misdemeanor, and shall, upon conviction * * * be punished by a fine of not less than $5 nor more than $45."

Garbage.

Act approved January 27, 1905 (33 Stat. pt. 1, 621), entitled "An Act To Authorize the Commissioners of the District of Columbia to enter into contract for the collection and disposal of garbage, ashes, and so forth."

"* * * *Provided further*, That said Commissioners are hereby authorized to make all regulations necessary for the collection and disposal of garbage, miscellaneous refuse, ashes, dead anmials, and night soil, and to annex to such regulations

such penalities as may in the judgment of said Commissioners be necessary to secure the enforcement thereof."

Police Regulations of the District of Columbia, Article XXI,—Garbage, Ashes, and Other Refuse:

"Section 1. The word 'garbage' whenever it occurs in this article shall be held to mean the refuse of any animal and vegetable foodstuffs, except oyster and clam shells; and the words 'dead animals' whenever they occur in this article shall be held to mean any dead animal not killed for food.

"Sec. 2. Occupants of dwelling houses, proprietors of boarding houses, commission warehouses, hotels, restaurants, and other places where garbage is accumulated, and owners, agents, and occupants of apartment or tenement houses shall provide for the use of such premises a sufficient number of receptacles to contain all garbage which may accumulate on said premises during the usual interval between the collections of garbage therefrom and shall keep such receptacles at all times in good repair. Each such receptacle shall be made of metal, watertight, provided with a tight cover with a handle, and shall be so constructed that the contents can be removed therefrom easily and without delay. No person without a permit from the supervisor of city refuse division shall use for the reception of garbage any receptacle having a capacity of less than 3 nor more than 10 gallons nor more than 1 receptacle containing less than 10 gallons. Garbage receptacles of the sunken type shall be located at the point of collection or the interior can must be covered and set out for collection as herein provided.

"Sec. 3. Occupants of any dwelling house, apartment, or tenement house, and each proprietor of any boarding house, commission warehouse, hotel, restaurant, and other place where garbage is accumulated shall cause all garbage from his or her premises to be put in the receptable

provided for the purpose. Each person aforesaid shall cause such receptacle to be kept covered at all times and to be placed and to remain between the hours of 7 a. m. and 6 p. m. of each day on which the collection is made from his or her premises, in such position as to be easily accessible to the garbage collector, or as may be designated by the supervisor of city refuse division. No person shall place or cause to be placed in any garbage receptacle any substance other than garbage, which shall at all times be kept free from dishwater and as dry as practicable."

Nuisances.

Act approved April 14, 1906, 34 Stat. 115 (Secs. 5-313, 315, D. C. Code, 1940) entitled:

"An Act to provide for the abatement of nuisances in the District of Columbia by the Commissioners of said District, and for other purposes.

"BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That whenever the owner of any real property in the District of Columbia shall fail or refuse, after the service of reasonable notice in the manner hereinafter provided, to correct any condition which exists on or has arisen from such property in violation of law or of any regulation made by authority of law, with the correction of which condition said owner is by law or by said regulation chargeable, or to show cause, sufficient in the judgment of the Commissioners of said District, why he should not be required to correct such condition, then, and in that instance, the Commissioners of the District of Columbia may, and they are hereby authorized to, cause such condition to be corrected; assess the cost of correcting such condition and all expenses incident

thereto (including the cost of publication, if any, hereinafter provided for) as a tax against the property on which such condition existed or from which such condition arose, as the case may be; and carry such tax on the regular tax rolls of said District, and collect such tax in the same manner as general taxes in said District are collected: PROVIDED, That the correction of any condition aforesaid by said Commissioners under authority of this section shall not relieve the owner of the property on which such condition existed, or from which such condition arose, from criminal prosecution and punishment for having caused or allowed such unlawful condition to arise or for having failed or refused to correct the same.

"Sec. 2. That for the purpose of carrying into effect section one of this Act the Commissioners of the District of Columbia and all other persons, including contractors and employees of contractors acting under their authority or by their direction, be, and they are hereby, authorized to enter upon and into any lands and tenements in said District, during all reasonable hours, to inspect the same and to do whatever may be necessary to correct, in a good and workmanlike manner, any condition that exists on or has arisen from such lands or tenements in violation of law or of any regulation made by authority of law, with the correction of which condition the owner of said lands or tenements is by law or such regulation chargeable. Any person who shall hinder, interfere with, or prevent any inspection or work authorized by this Act shall, upon conviction thereof, be punished by a fine not exceeding one hundred dollars or by imprisonment for a period not exceeding three months, or by both such fine and imprisonment, in the discretion of the court.

"Sec. 3. That for the purposes of this Act any notice required by law or by any regulation aforesaid to be served shall be deemed to have been served (a) if delivered to the person to be notified, or if left at the usual residence or place of

business of the person to be notified, with a person of suitable age and discretion then resident therein; or (b) if no such residence or place of business can be found in said District by reasonable search, if left with any person of suitable age and discretion employed therein at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said notice relates; or, (c) if no such office can be found in said District by reasonable search, if forwarded by registered mail to the last known address of the person to be notified and not returned by the post-office authorities; or, (d) if no address be known or can by reasonable diligence be ascertained, or if any notice forwarded as authorized by the preceding clause of this section be returned by the post-office authorities, if published on three consecutive days in a daily newspaper published in the District of Columbia; or, (e) if by reason of an outstanding, unrecorded transfer of title the name of the owner in fact can not be ascertained beyond a reasonable doubt, if served on the owner of record in the manner hereinbefore in this section provided. Any notice required by law or by any regulation aforesaid to be served on a corporation shall for the purposes of this Act be deemed to have been served on any such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of notices on natural persons holding property in their own right; and, if required to be served on any foreign corporation, if served on any agent of such corporation personally, or if left with any person of suitable age and discretion residing at the usual residence or employed at the place of business of such agent in the District of Columbia. Every notice aforesaid shall be in writing or printing, or partly in writing and partly in printing; shall be addressed by name to the person to be notified; shall describe with certainty the character and location of the un-

lawful condition to be corrected, and shall allow a reasonable time to be specified in said notice, within which the person notified may correct such unlawful condition or show cause why he should not be required to do so."

OTHER ACTS OF CONGRESS AND REGULATIONS AFFECTED

Drainage Act

Act of May 19, 1896, 29 Stat. 125, ch. 206, (D. C. Code, 1940 ed., Sec. 6-401):

"That each original lot or subdivisional lot situated on any street in the District of Columbia where there is a public sewer shall be connected with said sewer in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind, except human urine and fecal matter, shall flow into said sewer; and if such original lot or subdivisional lot is situated on any street in said District where there is a public sewer and water main, such original lot or subdivisional lot shall be connected with said sewer and also with said water main in such manner that any and all of the drainage of such lot, whether water or liquid refuse of any kind shall flow into said sewer: PROVIDED, That the connections required to be made by this Act shall be made under the following conditions: When there is on any such original lot or subdivisional lot aforesaid any building used or intended to be used as a dwelling, or in which persons are employed or intended to be employed in any manufacture, trade, or business, or any stable, shed, pen, or place where cows, horses, mules, or other animals are kept, then, and in that instance, such original lot or subdivisional lot shall be connected with a public sewer and water main or with a

public sewer, as may be required with this Act; and whenever there is no such building, stable, shed, pen, or place, as aforesaid, on such original lot or subdivisional lot, then such lot shall be required to be connected with a public sewer only when it has been certified by the health officer of said District that such connection is necessary to public health."

Plumbing.

Section 4 of the *Act approved April 23, 1892*, 27 Stat. 21, (D. C. Code, 1940 ed., Sec. 1-727):

"The inspector of plumbing and his assistants shall be under the direction of said Commissioners, and they are hereby empowered accordingly, to inspect or cause to be inspected, all houses when in course of erection in said district, to see that the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof conform to the regulations hereinbefore provided for; and also at any time, during reasonable hours, under like direction, on the application of the owner, or occupant, or the complaint under oath of any reputable citizen to inspect or cause to be inspected any house in said district, to examine the plumbing, drainage, and ventilation of sewers, and gas-fittings thereof, and generally to see that the regulations hereinbefore provided for are duly observed and enforced."

Unsafe Buildings.

Section 1 of the *Act approved March 1, 1899*, 30 Stat 923, as amended, (D. C. Code, 1940 ed., Sec. 5-501):

"If in the District of Columbia any building or part of a building, staging, or other structure, or anything attached to or connected with any building or other structure or excavation, shall, from

any cause, be reported unsafe, the inspector of buildings shall examine such structure or excavation, and if, in his opinion, the same be unsafe, he shall immediately notify the owner, agent, or other persons having an interest in said structure or excavation, to cause the same to be made safe and secure, or that the same be removed, as may be necessary. The person or persons so notified shall be allowed until 12 o'clock noon of the day following the service of such notice in which to commence the securing or removal of the same; and he or they shall employ sufficient labor to remove or secure the said building or excavation as expeditiously as can be done; *Provided, however,* That in a case where the public safety requires immediate action the inspector of buildings may enter upon the premises, with such workmen and assistants as may be necessary, and cause the said unsafe structure or excavation to be shored up, taken down, or otherwise secured without delay, and a proper fence or boarding to be put up for the protection of passersby."

Electrical Inspector.

Section 2 of the *Act approved April 26, 1904,* 33 Stat. 307 (D. C. Code, 1940 ed., Sec. 1-720):

"The electrical engineer who shall be chief inspector of electrical work and his assistants are hereby empowered and required, under the direction of the commissioners, to inspect any building in course of erection and during reasonable hours to enter into and examine any building where electrical current is produced or utilized for lighting, heating, or for power, for the purpose of ascertaining violations of any of the provisions of sections 1-719 to 1-723; and upon finding any devices aforesaid defective or dangerous shall cause to be delivered a written notice of any violation of any

provisions of said sections, or of any regulation of said Commissioners duly adopted, to the constructing contractor, owner, or agent of any building directing him or them to remove or amend the same within a period to be fixed in said notice; and in case of neglect or refusal on the part of the party so notified to remove or amend the same within the time and in the manner prescribed by the chief inspector of electrical work, and approved by the Commissioners of the District of Columbia, the party so offending shall pay a fine of not more than $25 for each and every day's failure or neglect to remove or amend the same after being so notified, and in default of payment of such fine such persons shall be confined in the workhouse of the District of Columbia for a period not exceeding one month; and all prosecutions under sections 1-719 to 1-723 shall be in the police court of said District, in the name of the District of Columbia."

Insanitary Buildings.

Act of May 1, 1906, 34 Stat. 157, ch. 2073, Secs. 1 and 11 (D. C. Code, 1940 ed., Secs. 5-601, 5-611):

"There is hereby created in and for the District of Columbia a board to be known as the Board for the Condemnation of Insanitary Buildings in the District of Columbia, to consist of the assistant to the engineer commissioner in charge of buildings, the health officer, and the inspector of buildings of said District, and to have jurisdiction and authority to examine into the sanitary condition of all buildings in said District, to condemn those buildings which are in such insanitary condition as to endanger the health or lives of the occupants thereof or of persons living in the vicinity, and to cause all buildings to be put into sanitary condition or to be vacated, demolished, and re-

moved, as may be required by the provisions of this chapter. Said board may authorize and direct the performance of any of the ministerial duties of said board by officers, agents, employees, contractors, and employees of contractors duly detailed or employed by the commissioners of said District for that purpose. Said board, the members thereof, and all persons acting under its authority, may, between the hours of 8 o'clock antemeridian and 5 o'clock postmeridian, peaceably enter into and upon any and all lands and buildings in said District for the purpose of inspecting the same. Said board shall report its operations to the commissioners of the District of Columbia from time to time as said commissioners direct. Said commissioners shall furnish said board such assistance as may be required for the proper conduct of its work, by details from various departments and officers of the government of said District.

* * * * * * * * *

"Sec. 11. No person shall interfere with any member of the Board for the Condemnation of Insanitary Buildings or with any person acting under authority and by direction of said board in the discharge of his lawful duties, nor hinder, prevent, or refuse to permit any lawful inspection or the performance of any work authorized by this Act to be done by or by authority and direction of said board."

Boiler Inspector.

Act of June 25, 1936, 49 Stat. 1917, ch. 802, § 10 (D. C. Code, 1940 ed., Sec. 1-711):

"The boiler inspector and his assistants shall have the right to enter, in the performance of his or their duties, at all reasonable hours, all premises on which a steam boiler or unfired pressure

vessel is being installed, operated, or maintained, and it shall be unlawful for any person to deny admittance to any such inspector or assistant or to interfere with him or them in the performance of his or their duties."

Fire Prevention.

Police Regulations of the District of Columbia, Article XI, p. 76, Inflammable Liquids and Combustible Materials:

"Sec. 31. The chief engineer, the fire marshal and his deputies, and the battalion chief engineers of the Fire Department are, and each of them is, authorized and empowered, whenever the public safety requires the same, to enter into and upon all buildings and premises, at all reasonable hours, for the purpose of examination; and whenever any of said officers shall find in any building or upon any premises combustible or inflammable material or other conditions in his or their judgment dangerous to the safety of such building, premises or property adjacent thereto or likely to obstruct or interfere with the members of the Fire Department in the event of a fire therein, he or they shall order the same to be removed or remedied, and such order shall be forthwith complied with by the owner or occupant of said building or premises, or any other person responsible for creating and/or maintaining any such condition: PROVIDED, HOWEVER, That if said owner or occupant of said building or premises, or any other person chargeable hereunder, shall deem himself aggrieved by such order he may, within 24 hours thereafter, appeal from such order to the Commissioners of the District of Columbia, and unless said order is by them revoked it shall remain in force and be forthwith complied with by said owner or occupant, or any other person chargeable hereunder. The

fire marshal shall make an immediate investigation as to the presence of combustible material or the existence of inflammable conditions in any building or upon any premises upon complaint of any person having an interest in said building or premises or property adjacent thereto. Any owner or occupant of any building or premises, or any other person chargeable hereunder, failing to comply with the orders of the fire marshal or his deputies, the chief engineer, or the battalion chief engineer of the fire department, made in compliance with and upon the authority of the provisions of this section, shall, upon conviction thereof, be punished by a fine as provided in these regulations; and any owner or occupant of any building or premises, or any other person chargeable hereunder, who shall willfully obstruct or interfere with any of said last-mentioned officers in the performance of their above-specified duties, shall, upon conviction thereof, be punished by a fine as provided in these regulations."

Rodents.

Police Regulations of the District of Columbia, Article XXXII, p. 153, Rodent Control.

"Section 1. The health officer of the District of Columbia is authorized to make or cause to be made inspections of existing buildings and other structures to determine the prevelance of rats, and if necessary for the protection of the public health, he may order the following things to be done:—first, the vent stoppage of any rat-infested building or other structure or part thereof; second, the removal from the premises of trash or refuse which may provide rat harborages; third, the protection of food and garbage from rats; fourth, the extermination of rats on the premises by baiting or trapping or both. In the event of the proposed demolition, moving or removing, in whole or in part, of

any building or structure, a certificate shall be obtained from the Health Officer stating that proper measures have been taken for the eradication and prevention of spread of rodents from the premises, before the permit to demolish or remove the building, or part, is issued. In the event of the demolition or removal of a building, or part, by order of the Inspector of Buildings, the eradication of rodents will be done by and certified to by the Health Officer, within the time specified in such order.

"Sec. 2. Any person who shall refuse to permit or shall interfere with such inspections, or any owner or occupant of any building or premises who shall fail or neglect to comply with an order issued under the authority of Section 1 within the time allowed by said order, shall be guilty of a violation of these regulations.

"Sec. 3. Any person violating any of the provisions of these regulations shall, on conviction thereof, be punished by a fine of not more than $50.00."

Excerpts from Annual Report of the Commissioners of the District of Columbia.

The Annual Report of the Commissioners of the District of Columbia, required by Sec. 12 of the Organic Act of 1878, enumerates the number of inspections made by the several inspection agencies of the District Government referred to in this brief in the fiscal year ending June 30, 1948 (the fiscal year in which the inspection here involved was attempted), and the result accomplished thereby, as follows:

122 **Building Inspection Division.**

Condemnation proceedings to secure the repair or demolition of approximately 1,750 dangerous and unsafe buildings under the act of March 1, 1899, as amended April 5, 1935, were instituted during the year, resulting in the razing of

16 buildings and repair of approximately 1,200 buildings. This work involved the serving of approximately 3,000 notices to property owners.

At the end of the year there were approximately 185 buildings against which condemnation proceedings had been initiated. The proceedings were in various stages of completions at the close of the fiscal year.

123 **Plumbing Inspection.**

There were 40,784 inspections of plumbing in new buildings, and on extensions, remodeling, and repairs to existing plumbing systems; 5,213 complaints of defective plumbing were investigated and defects ordered corrected; 3,409 inspections were made of restaurants and other establishments where food or beverages were prepared or sold for human consumption; 39 gas cases were investigated, the majority of which were attempted suicide cases, and no serious gas conditions were found; 406 inspections were made by the head of the office and his assistant, principally investigations of illegal plumbing work and cases of appeal or unusual nature; 4,386 inspections were made of rooming, lodging, and apartment houses for licenses.

10,873 plumbing permits were issued, fees amounting $29,903.50.

The refrigeration inspection division made 6,707 inspections of refrigeration and air-conditioning systems. There were 793 permits issued, the fees amounting to $3,790. The approximate cost of refrigeration machinery and air-conditioning equipment was $1,746,329. There were investigations made of 362 refrigeration accidents caused by escaping gas fumes; none were fatal.

125 **Boiler Inspection.**

The Boiler Inspection Act requires the annual inspection of all high-pressure (above 15 pounds pressure) boilers,

low-pressure (below 15 pounds pressure) boilers having an assisted return and unfired pressure vessels operating at pressures above 60 pounds; District of Columbia boiler inspectors made a total of 4,407 calls. These resulted in the inspection of 1,822 boilers and 1,398 pressure vessels or a total of 3,220. This includes 572 District Government boilers and 250 pressure vessels, or a total of 822. It also includes 789 inspections to cover the installation of new boilers and pressure vessels for which permits were issued. Orders were issued to make changes or repairs to 365 boilers and 142 pressure vessels; 7 boilers and 2 vessels were condemned as being unfit for further service. Insurance company reports were received on 1,331 boilers and 691 pressure vessels, or a total of 2,022. The grand total of all boilers and vessels inspected is 5,242.

126 **Electrical Inspection Division.**

The Electrical Inspection Division is charged with the following functions and responsibilities:

1. The inspections and reinspections of electrical installations, fixtures, and appartus for light, heat, and power purposes, to require conformity with minimum standards for safety to life and property, and the enforcements of laws and regulations relating thereto in the District of Columbia.

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1948

Total number of inspections made	47,734
Total number of permits issued	26,963
Total number of defective wiring notices served	2,533
Total number of complaints received	6,218
Total number of installations approved	28,079

140 **Fire Prevention.**

The department made 132,348 fire prevention inspections during the year. Of these the Fire Prevention Division made 73,730 and the Firefighting Division 58,618. This represents a decrease of 15,671. Notices to abate fire hazards were served in 14,769 cases, an increase of 1,071.

177 **Bureau of Preventable Diseases.**

The activities of the Bureau of Preventable Diseases include the investigation and follow-up of certain reported cases of communicable diseases, immunization service, including protection against smallpox, typhoid fever, diphtheria, and whooping cough, and the diagnostic services in connection with the bacteriological and serological laboratories and research problems. Tuberculosis and venereal-disease-control activities are not administered by the Bureau of Preventable Diseases.

The following table shows to what extent contagious diseases existed in the District of Columbia during the calendar years shown.

Reportable diseases in the District of Columbia, cases and case rates during the calendar years 1943, 1944, 1945, 1946, and 1947

Diseases	Cases 1947
Amoebic dysentery	4
Anterior poliomyelitis	23
Chicken pox	1,337
Diphtheria	8

Diseases	Cases 1947
Ep. cerebro-spinal meningitis	24
Leprosy	0
Measles	576
Pellagra	1
Pneumonia	890
Psittacosis	0
Rocky Mountain spotted fever	0
Scarlet fever	403
Smallpox	0
Tuberculosis communicable	1,860
Tularemia	7
Typhoid fever	6
Typhus fever	1
Undulant fever	0
Venereal disease	17,074
Whooping cough	625
Total	22,839

In general the year 1947 was characterized by a relatively low total incidence of communicable diseases. Except as noted below, there was no unusual incidence of any of the diseases with which the bureau was interested.

TYPHOID FEVER

A total of six cases with no deaths were reported in 1947, which constitutes the lowest incidence on record in the District of Columbia and the first year in which there were no deaths from this disease.

DIARRHEA

In February and March an epidemic of diarrhea or gastroenteritis of unknown etiology occurred especially in the nonwhite population of the city. It appeared on the ob-

stetrical ward and newborn infants were susceptible to the infection. Apparently it was spread by contact, since there was no epidemiological evidence of spread through food or water.

178 **Bureau of Public Health Engineering.**

The responsibility of the Bureau of Public Health Engineering is to promote and protect the public health by supervision, control, and advice on matters relating to environmental sanitation, public health engineering, industrial hygiene, and pest and rodent control. The objectives of the Bureau's activities are preventive rather than curative. Circumstances which would create environmental conditions detrimental to public health should be anticipated and steps taken for prevention before actual occurrence.

Statistical tables of performance and results

Environmental sanitation program:	1947
Field activities	
Original inspections	24,626
Reinspections	34,786
Calls for information and service	18,879
Total	78,291
Original inspections classified:	
Rooming and lodging houses (approvals only)	1,717
Junk shops	52
Child-care facilities	39
Building razing	233
Barber and beauty shops	183
Privies	24
Nuisance complaints	9,121
House-to-house, pick-ups and others	13,257
Total	24,626

Rodent control program:	
Pounds of bait prepared	34,345
Pounds of bait given public & institutions	2,143
Pounds of bait placed	32,202
No. of locations gassed, baited & trapped	7,515
Complaints: Rats and mice	1,355
Orders issued:	
Mice	9
Rats:	
Extermination	2,594
Harborage removal	3,155
Rat-proofing	1,716
Orders abated:	
Mice	12
Rats:	
Extermination	2,653
Harborage removal	3,363
Rat-proofing	1,523

Nuisances Classified

Nuisances involving:	1947		
	Complaints	Ordered corrected	Abated
Animals	274	217	209
Buildings	1,996	1,745	1,345
Heating and cooking facilities	552	630	623
Industrial	95	15	15
Pests and rodents	1,476	7,548	7,626
Plumbing	1,575	1,982	1,916
Rubbish and garbage	1,019	7,423	7,565
Sewerage	1,082	1,131	1,202
Water supply	572	414	418
Miscellaneous	480	896	854
Totals	9,121	22,001	21,773

REPORT OF THE SANITARY COMMISSION OF MASSACHUSETTS, 1850, by Lemuel Shattuck and others; reprinted by Harvard University Press, 1948, with a forword by Charles-Edward Amory Winslow.

[168] "XXIV. We recommend *that the local Boards of Health provide for periodical house-to-house visitations, for the prevention of epidemic diseases, and for other sanitary purposes.*

The approach of many epidemic diseases is often foreshadowed by some derangement in the general health; and, if properly attended to at that time, the fatal effects may be prevented. This is especially proper in regard to cholera and [169] dysentery. The premonitory symptoms of cholera are seldom absent; and if these are seasonably observed and properly treated, the disease is controllable. There are few diseases over which curative measures have less, and few over which preventive measures have greater power. This well-known characteristic of the disease led persons in many places in England, during last year, to organize a system of house-to-house visitation, by which every family, sick or well, in a given district, was visited daily by some authorized person, whether invited or not; and every inmate who had the least symptom of the disease received advice and treatment. * * * We select the following statement of its effects in one district, as an illustration of what occurred in many others:—"* * * [170] * * * During the first week that this system of visitation has been in practice, the visitors discovered 1582 cases of premonitory diarrhoea, and on the second week, 1387; in all, in one fortnight, 2969. Out of this great number, only four deaths have occurred; but in parts of the town not under visitation, among the wealthier classes, attended by their own private medical friends, there have occurred seven deaths. In a rural district connected with Sheffield, —namely, Altercliffe,—not during this period under visita-

tion, with 279 cases of diarrhoea, there were 23 cases of cholera, and 11 deaths. No stronger evidence can well be conceived of the efficiency of that preventive measure which is founded on the fact, which experience has too fully proved, that persons in general laboring under premonitory symptoms are not aware of their danger, and that, if those persons are to be saved, they must be sought out in their dwellings, and placed at once under proper treatment." • • •

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IV. REASONS FOR APPROVING THE PLAN RECOMMENDED

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But the Sanitary Reform we advocate lies chiefly in another field of observation and discovery, which has as yet been very imperfectly explored. This may be called the *Province of Prevention*—prevention of disease—prevention of suffering—prevention of sanitary evils of every kind; and the efforts of those who enter this hopeful province should be directed to the discovery and the means of removal of the *causes of these evils*. Every effect must have a cause—every disease has its cause. And the effort should be to ascertain the exact relation which one bears to the other—what known, exact and positive causes, will produce a known, exact and positive disease, or a sanitary evil of any specific kind, and none other. And is not this as far within the limits of possibility and certainty as is the treatment and eradication of disease? Cannot the exact nature of an atmospheric, local or personal cause of disease, and the exact personal condition with which it most easily assimilates, and which it most easily affects, be

definitely and accurately ascertained? If such a desirable discovery could be made, what manifold blessings on humanity would it confer! We know that a human body, unaltered from its original organization or functions, coming in contact with the virus of small-pox, either inhaled while floating in the atmosphere, or imbibed by outward contact or innoculation, will produce a [276] specific effect, —a specific disease. Here is cause and effect of a known and exact relation to each other. We know, too, that vaccination, properly performed, will alter the original organization or functions, so that the same virus will not in either way take effect. Here is another exact cause and effect whose relations are equally known. This is a discovery which has, within the last fifty years, saved thousands and thousands of lives, and might have saved thousands more, had it been universally applied. Now it is but fulfilling the demands of the age to press inquiries vigorously, and to endeavor to discover the causes of every disease which may attack the human body. If the same exact and definite information could be obtained, as to the causes of cholera, dysentery, scarlatina, typhus, consumption, and the other grave diseases, to which we are subject, and as to the particular condition of the individual which they most easily affect, how much might be done for the avoidance of those diseases by the removal of their causes! How many lives might be saved, how much suffering might be prevented! Does not the spirit of the age then demand the approval of a measure which promises to do this great, —most important work!

VII. *It Should Be Approved Because* IT INVOLVES AN IMPORTANT DUTY

If a measure is practical, useful, economical, philanthropic, moral, and demanded by the spirit of the age, it needs no argument to show that it is our duty to approve it. And if such is our obligation, nothing further need be

said. For, in our judgment, whoever violates a *known duty* is guilty of crime and justly makes himself liable to its penalties. If an individual swallows poison, and death immediately follows; or if, by improper eating, drinking, or course of life, he gradually debilitates his constitution, and death is the ultimate consequence, he violates a known law, neglects his duty, and justly suffers [277] the physical penalties of his guilt. If we, as social beings, make no effort to elevate the sanitary condition of those around us by removing the causes of disease, we violate a known duty, and make ourselves justly guilty and liable to punishment; and we shall inevitably be punished, either by suffering sickness, or by death, or in some other way. If a municipal or state authority neglects to make and execute those sanitary laws and regulations on which the health and life of the people depend, they violate a known duty, and are justly chargeable with guilt and its consequences; and they will certainly be punished, either by means of less capacity for labor, of increased expenditures, of diminished wealth, of more abject poverty and atrocious crime, or of more extended sickness and a greater number of deaths; or in some other form. These are the physical and social consequences of a neglect of sanitary duty. But there are others; and we would mention them with all that regard which is their due.

It has already been said that the first sanitary laws were the direct revelation of the Divine Lawgiver; and that they have been further developed in the successive ages of the world. These laws are now, to some extent, well understood. And may we not conclude that we shall be brought to an account for the manner in which we have observed and obeyed them? May we not reasonably believe that we shall hereafter see the wisdom of that providence which produces the earlier and later deaths, the physical sufferings, and the innumerable sanitary evils which surround and afflict us in this world,—that they were the just and

inevitable result of violations of those sanitary laws which were given us for our guidance and happiness,—and that these evils might have been avoided if these laws had been understood and obeyed? May it not then appear that many a law-maker, many a public administrator, and many a private individual, has been guilty of robbing others, and of robbing himself, of health and of life,—all that is dear on earth;—guilty of murders and of suicides;—and none the less fearfully real and punishable because they were unintended? The possibility of such a result may well arrest universal attention. 'In regard to the whole range of the laws of health [278] and life, Providence seems to treat mere ignorance as an offence, and to punish it accordingly.' There is a great social and personal responsibility resting upon every one in this matter; and it is well that it should be felt in all its force and importance, and that all the duties which it requires should at all times, and in all places, be wisely discharged. * * *

[304] 8. It appeals to the *State*. Under our constitution and laws 'each individual in society has a right to be protected in the enjoyment of his life.' This may be considered in a sanitary as well as a murderous sense. And it is the duty of the State to extend over the people its guardian care, that those who cannot or will not protect themselves, may nevertheless be protected; and that those who can and desire to do it, may have the means of doing it more easily. This right and authority should be exercised by wise laws, wisely administered; and when this is neglected the State should be held answerable for the consequences of this neglect. If legislators and public officers knew the number of lives unnecessarily destroyed, and the suffering unnecessarily occasioned by a wrong movement, or by no movement at all, this great matter would be more carefully studied, and errors would not be so frequently committed. * * * "

Hearings Before Subcommittee of the Committee on Banking and Currency, United States Senate, 81st Congress, 1st Session, on General Housing Legislation, Feb. 3-21, 1949.

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February 11, 1949.

433 **"Statement of Leonard A. Scheele, Surgeon General of the United States Public Health Service.**

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441 Senator DOUGLAS. I am much impressed with the statement. I wonder if Dr. Scheele would submit a memorandum, which he hinted on page 6 that he would be willing to submit, an abstract of the studies which have been made of the coincidence of bad housing and disease, and so forth?

Dr. SCHEELE. Yes, sir; we will be happy to submit an abstract of some of those studies.

Senator DOUGLAS. Thank you.

(The following was later submitted for the record:)

SUPPLEMENTAL DATA CONCERNING RELATIONSHIP OF HOUSING TO HEALTH

The following statements and data are taken from published reports of studies by representatives of the Public Health Service and by others. They represent neither an exhaustive summary of the literature nor a comprehensive analysis of all pertinent data. Rather, they have been selected as illustrative of several points raised in the formal statement, and as a result of questions by members of the subcommittee.

Enteric diseases.—There have been numerous studies of the relationship between housing quality and the attack rates for enteric diseases. The National Health Survey,

conducted by the Public Health Service during 1935 and 1936, revealed an excessive incidence of typhoid and paratyphoid fever, and of diarrhea, enteritis, and colitis among persons living in houses lacking private inside flush toilets as compared with families having such facilities (1). The frequency (per 1,000 persons) of cases of typhoid and paratyphoid disabling for 7 days or longer during 1 year for all income groups was more than twice as high for persons living in houses without private inside flush toilets—0.29, as compared with 0.13 for persons living in houses with private inside flush toilets. Correspondingly, rates for diarrhea, enteritis, and colitis, using the same bases for analysis, were 1.3 and 1.

Graves and Fletcher studied the incidence of typhoid fever and of infant mortality in Memphis (2). For colored families, they report: 'In a group of wards in which the percentage of families without private toilets was 80 or above, the typhoid-fever case rate was 64.2 (per 100,000 population per year); * * * where the percentage of families without private toilets was 60-79, the case rate was 43.1; and for a group of wards where the percentage of families without private toilets was below 60, the rate was 29.1.' They concluded that typhoid-fever case rates and infant mortality for both the white and the colored races varied directly with their slum index—i.e., the more serious the slum conditions, the higher the rates.

McConigle has noted a significant decrease in the infant mortality rate—from 172.6 to 117.8 infant deaths per 1,000 live births per year—for babies born into families who have been moved from slums to satisfactory housing (3).

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DWELLING INSPECTION BY FIRE DEPARTMENTS

By M. S. Blake, Field Engineer, N.F.P.A.

(Pamphlet reprinted from the *Quarterly* for April, 1936, revised 1940; published by National Fire Protection Association, 60 Batterymarch Street, Boston, Mass.)

"The increasing attention to the elimination of home fire hazards in cities is one of the most gratifying developments in the field of fire waste reduction. Recognition of the importance of special effort to prevent fires in dwellings follows a general increase in the number of dwelling fires in the United States during the past ten years. The majority of all fire fatalities now occur in residences.

For some years past fire departments in most cities have been fire prevention agencies as well as fire extinguishing organizations. They have sent their uniformed forces into buildings armed with special authority to inspect for hazards, but until recent years this work has been largely confined to public and business properties. Several apparent difficulties have been responsible for not including the private residence in the inspection program, though fires in this occupancy in practically all cities regularly outnumber the fires in other buildings. Chief among these is the common idea that 'a man's house is his castle' and laws limiting the legal power of fire departments to enter dwellings except in special cases. Some undermanned departments also regarded fire prevention visits to a large number of dwellings as too great an undertaking to be made a part of their routine inspection program. These difficulties, however, have finally been overcome by progressive

fire chiefs determined to stem the rising tide of home fires in their communities, and an increasing number of cities are now extending their fire department inspection service to homes.

It has been clearly established that a well-publicized dwelling inspection campaign carried out by uniformed firemen may be successfully introduced in any city without necessity for invoking the law. Experience has shown that it is the exceptional householder who will not welcome helpful advice to prevent loss of lives and property in his home by fire, and refusals of admittance to firemen making a proper approach have been rare. Although conducted wholly on a basis of courtesy rather than law, the service soon becomes an accepted one in the community and its continuation in subsequent years ceases to require the explanatory publicity usually necessary when the inspection is first started. Moreover, lack of a large fire department personnel need not be a serious hindrance to comprehensive inspection of dwellings. In a number of cities, large and small, faced with this problem the firemen have been convinced of the public good will and prestige which accrue to the benefit of their department and themselves from this service to the greater body of citizens and have willingly volunteered some off-day time for it.

Some of the cities in which the fire department has carried out an organized fire prevention inspection of dwellings are:

Arlington, Mass.
Baton Rouge, La.
Berkeley, Calif.
Boston, Mass.
Brockton, Mass.
Cambridge, Mass.
Chelsea, Mass.
Cincinnati, Ohio
Cleveland Heights, Ohio
Dallas, Texas
El Dorado, Ark.
Erie, Pa.
Everett, Mass.
Fitchburg, Mass.
Fort Collins, Col.
Fort Wayne, Ind.
Fort Worth, Texas
Grand Rapids, Mich.
Hartford, Conn.
Helena, Ark.
Indianapolis, Ind.
Irvington, N. J.
Jonesboro, Ark.
Little Rock, Ark.
Lynchburg, Va.
Lynn, Mass.
Malden, Mass.
Memphis, Tenn.
Meriden, Conn.
Middletown, Conn.
Middletown, Ohio
Newport News, Va.
Oklahoma City, Okla.
Omaha, Neb.
Parkersburg, W. Va.
Peabody, Mass.
Pine Bluff, Ark.
Providence, R. I.
Portsmouth, Ohio
Salem, Mass.
St. Paul, Minn.
Schenectady, N. Y.
Springfield, Mass.
Taunton, Mass.
Worcester, Mass.

In most of these cities the inspection of homes is made regularly each year or oftener, and in some it has now become a continuous routine.

(Graph has been omitted.)

As to results, Cincinnati is an excellent example of what has been done. For many years the fire department included in its regular fire hazard inspection program a small proportion of the city's residential occupancies. An excessive number of fires and loss in dwellings up to then brought about, in 1934, a change in the work to provide continuous inspection of all residence properties throughout the city by members of fire department companies in their own districts. The following table shows the relation between annual number of inspections and number of fires in dwellings in Cincinnati.

Year	Dwellings Inspected	Dwelling Fires
1928	8,150	951
1929	8,619	992
1930	9,613	1,113
1931	7,292	916
1932	9,717	984
1933	10,697	1,013
Six-year average	9,015	995
1934	81,052	522
1935	78,288	488
1936	74,493	595
1937	68,501	524
1938	78,348	404
1939	61,756	465
Six-year average	73,740	500

The usual procedure followed in making an organized fire hazard inspection of dwellings by firemen varies somewhat in different cities, but its essential features are much the same. The highly successful methods employed in Providence, R. I., a city of 250,000 population, are typical. The initial campaign was inaugurated there by Fire Chief Frank Charlesworth in 1930 and may well serve as a helpful illustration for other cities of any size. Convinced of its feasibility, the Chief sought and received the enthusiastic cooperation of the fire prevention committee of the Providence Chamber of Commerce and a series of meetings was held to work out the details of the program. An attractive illustrated leaflet explaining common fire hazards of the home and a small window card with the inscription 'We Are Working with the Providence Fire Department to Fight for Fewer Fires' were designed and printed. It was decided to confine the inspection to basements. The campaign was opened in late September, just prior to Fire Prevention Week and for the first week stories were carried by the newspapers with local dwelling fire statistics, showing the need of the plan and explaining it with special emphasis on its purely educational purpose for public benefit free from any compulsion or threat to property owners.

Firemen were asked to volunteer off-day time and responded to a man to the appeal. All were carefully instructed as to how to proceed with their task. The men were assigned to work in pairs and 150 a day were available for inspection throughout the campaign, which required six weeks to visit all of the 77,000 homes in the city.

In making their rounds two firemen called at the back door of the house and asked permission of the housewife to make a fire inspection of the basement. She was asked to accompany them if her time would permit. Only the usual simple hazards found in basements were investigated. Hazards noted were pointed out at the time of inspection

and corrections suggested. The literature on home fire hazards was then distributed.

From the start of the campaign it was evident that the idea had the full support of the general public. Firemen were refused admittance to only 228 homes, a fraction of one per cent of the total number. Many home owners, unwilling that the firemen should find a dirty or hazardous condition, had anticipated their visit by cleaning up the basement before they arrived.

With public support for this service thus firmly established, its repetition presented no difficulty and the original campaign has now become a regular annual feature of fire prevention work in that city. The following dwelling fire record of Providence speaks for its benefits more eloquently than words.

Number of Dwelling Fires, Providence, R. I.

Before Start of Inspections

1926	610
1927	478
1928	477
1929	544
1930	549

Since Start of Inspections

1931	413
1932	374
1933	296
1934	292
1935	287
1936	293
1937	275
1938	301
1939	228

There are many other examples of diminishing dwelling fire records among the cities which have also executed similar plans for attacking this problem.

St. Paul has a very creditable record to show.

St. Paul—Dwelling Fire Record.

Before Dwelling Inspections

Year	No. of Dwelling Fires
1930	912
1931	858
1932	979
1933	1080
1934	1003

Since Dwelling Inspections

1935	956
1936	981
1937	841
1938	672
1939	658

Dwelling losses are not kept year by year, but figures were specially compiled for the N.F.P.A. by the St. Paul Fire Department. In 1934, the year before dwelling inspections were begun, dwelling fire losses were $279,970.54 (44 per cent of the total fire loss for that year), while the 1939 dwelling fire loss was $176,920 (or 31.1 per cent of the total year's fire loss). This is a sizable decrease.

Berkeley, California, with a program whereby the fire department regularly inspects dwellings has steadily reduced the number of dwelling fires in spite of increasing population.

Year	Population	Number of Dwelling Fires
1928	81,000	402
1929	85,000	367
1930	82,000	359
1931	83,000	298
1932	86,000	345
1933	89,000	308
1934	92,000	272
1935	93,000	295
1936	96,000	265
1937	97,000	251
1938	99,000	221
1939	102,000	231

Organized fire hazard inspection of dwellings in addition to other buildings is a logical part of a fire department's service to its community for fire prevention and fills a widespread need which has long existed. It has a particular advantage of being an inexpensive measure for any city to adopt. In every instance this practice has added practically nothing to the fire department budget. Proof of its value in dollars and cents return to a community at large is shown by the illustrations in this article of the resulting decline of fires with their damage to the homes. The rapid acceptance of the practice in a short time by cities in all regions of the United States is in itself evidence of its practicability and its value, both economically and for preservation of lives."